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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA	*
	*
v.	* 09-cr-30-01-02-GZS
	* July 8, 2009
EDWARD and ELAINE BROWN	* 1:00 p.m.
	*
	*
* * * * *	

DAY 7
AFTERNOON SESSION
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE GEORGE Z. SINGAL
AND A JURY

Appearances:

For the Government:	Arnold Huftalen, AUSA Terry Ollila, AUSA U.S. Attorney's Office 53 Pleasant Street Concord, NH 03301
For Edward Brown:	Michael J. Iacopino, Esq. Kristin Clouser, Esq. Brennan, Caron, Lenehan & Iacopino 85 Brook Street Manchester, NH 03104
For Elaine Brown:	Bjorn Lange, Asst. Fed. Defender Federal Defender's office 22 Bridge Street Concord, NH 03301
Court Reporter:	Sandra L. Bailey, LCR, CM, CRR Official Court Reporter United States District Court 55 Pleasant Street Concord, NH 03301 (603)225-1454

1 I N D E X

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3 Closing Arguments:

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1 BEFORE THE JURY

2 THE COURT: Is the government prepared to
3 close?

4 MS. OLLILA: The United States is, your Honor.

5 THE COURT: The jury will be pleased to hear
6 from you.

7 MS. OLLILA: Thank you very much. Good
8 afternoon, ladies and gentlemen. Before I begin I would
9 like to just take a moment to thank you all very much.
10 You have sat patiently, listened intently and seeing
11 over 200 exhibits during a very short period of time.

12 THE COURT: Move the microphone a little
13 closer, I'm having trouble hearing.

14 MS. OLLILA: I'm sorry, your Honor.

15 THE COURT: Thank you.

16 MS. OLLILA: I've always thought my voice has
17 been too loud, your Honor.

18 THE CLERK: Is it on?

19 MS. OLLILA: I think it is on. I'll try to
20 keep my voice up, your Honor.

21 THE COURT: Very good.

22 MS. OLLILA: So on behalf of the United
23 States, on behalf of Assistant United States Attorney
24 Arnold Huftalen, on behalf of paralegal Dena Blanco, and
25 on behalf of senior inspector Andre LaBier, we thank you

1 all very much.

2 As you now know, ladies and gentlemen, the
3 criminal conduct engaged in by Edward and Elaine Brown
4 which forms the basis of the charges in the instant
5 indictment occurred after they were indicted in April of
6 2006 for, among other things, tax evasion. Although
7 they were charged with tax evasion in a 17-count
8 indictment in April of 2006, they weren't taken into
9 custody until May, May 24th, 2006, when members of the
10 United States Marshal Service engaged in a ruse and
11 arrested Edward and Elaine Brown outside of Elaine
12 Brown's dental practice located on Glen Road in Lebanon,
13 New Hampshire. After they were arrested, they were
14 transported to the United States District Court, this
15 very courthouse, arraigned and then released on bail
16 conditions.

17 In January of 2007, January 9th, 2007, Edward
18 and Elaine Brown proceeded to trial. After three days
19 of trial, Edward and Elaine Brown decided that they
20 didn't like what was happening, so they refused to come
21 back. The court issued an arrest warrant for defendant
22 Edward Brown, and he never returned.

23 Because it had been a long weekend, Chief
24 Deputy Gary DiMartino, who was in contact with Edward
25 Brown and Elaine Brown, successfully convinced the

1 defendant Elaine Brown to return to trial, and she in
2 fact did. She returned on Tuesday, January 16th, 2007.

3 When she did so, the court, understandably,
4 amended her bail conditions. The court ordered that she
5 not return to 401 Center of Town Road, the residence she
6 shared with her husband Ed Brown. The court also
7 ordered that she reside with her son David in
8 Massachusetts. And the court also ordered that she wear
9 an electronic monitoring bracelet on her ankle.

10 The jury returned its verdict on January 18,
11 2007. Defendants Edward and Elaine Brown were convicted
12 on all 17 counts of the indictment. Sentencing was
13 scheduled to commence on April 24, 2006, and Elaine
14 Brown was once again released on the same bail
15 conditions.

16 On February 21st, 2007, Elaine Brown removed
17 the electronic monitoring device from her ankle and
18 returned to 401 Center of Town Road. As it had done
19 when defendant Ed Brown failed to come back to court,
20 the court issued an arrest warrant for the defendant
21 Elaine Brown.

22 On April 24th, 2007, both defendants, Edward
23 and Elaine Brown, were sentenced by the court, sentenced
24 in absentia. Neither one showed up.

25 The court ordered both to serve a 63-month

1 term of imprisonment.

2 By the time the court imposed the sentence on
3 Edward Brown it had been three and a half months since
4 he had fled. And by the time the court imposed the
5 sentence on Elaine Brown it had been just over two
6 months since she returned to the very cause that she
7 lived for.

8 What did they do during their time, ladies and
9 gentlemen? They solicited supporters, supporters to
10 take up arms with them. They spent their time stock
11 piling weapons, lethal weapons, all in order to forcibly
12 resist any attempt by law enforcement to take them into
13 custody.

14 Ladies and gentlemen, Edward and Elaine Brown
15 were not going to surrender. They were never going to
16 surrender. They wanted to wage war against the United
17 States, and they wanted to wage war against the United
18 States Marshal Service, just like what Ed Brown told
19 undercover Deputy Robinson on the porch during the night
20 of October 4. Any attempt by law enforcement to take
21 either he or his wife into custody would be met with
22 certain death.

23 Now, as you sit and listen to what will
24 inevitably be a lengthy attempt by defense counsel to
25 justify Edward and Elaine Brown's conduct --

1 MR. LANGE: Objection.

2 THE COURT: Yes.

3 MR. LANGE: Speculation.

4 THE COURT: Go ahead.

5 MS. OLLILA: To justify their conduct based
6 upon their personal belief of the tax laws, keep this
7 point in mind. It simply didn't and doesn't matter what
8 Edward and Elaine Brown's views are on taxation. The
9 fact is, they were charged in an indictment, convicted
10 by a jury of their peers, and sentenced by a United
11 States District Court judge. They alone decided that
12 their rules, not the rules and not the law of the United
13 States, would apply.

14 But they don't get to decide, ladies and
15 gentlemen, that when the outcome is contrary to what
16 they want, that they somehow have the right to turn
17 their back, head home, create a massive fortress of
18 firearms, IED's and pipe bombs, get caught and then
19 incredibly come here and try to turn the tables --

20 MR. LANGE: Objection. Burden shifting.

21 MR. IACOPINO: I join, your Honor.

22 MR. LANGE: Burden shifting.

23 THE COURT: Rephrase.

24 MS. OLLILA: Edward and Elaine Brown want you
25 to believe they are innocent.

1 MR. LANGE: Objection, same ground.

2 THE COURT: I said rephrase.

3 MS. OLLILA: Edward and Elaine Brown were tax
4 protesters. That much is absolutely clear. And they
5 believe they didn't have to pay their taxes. But there
6 was nothing about them or their views that equated to
7 peacefulness. They were devoted, single-mindedly
8 devoted to launching an offensive war in support of
9 their cause. They didn't care about the jury's verdict.
10 They didn't care about the court's arrest warrants.
11 They didn't care about the law. They certainly didn't
12 care that they had been sentenced to a term of
13 imprisonment because Edward and Elaine Brown only do
14 what suits their purpose.

15 Didn't Edward Brown say it so succinctly
16 himself when he testified yesterday. When he was
17 questioned about the tax evasion verdict, this is what
18 he said. He said, I could have cared less about the
19 verdict. I had no consideration for those people
20 anymore.

21 Doesn't this statement alone so epitomize what
22 Edward and Elaine Brown believed? How do you know that
23 the second Edward and Elaine Brown turned their backs
24 and went home that they had every intention to wage war?

25 Well, you can start by looking at their

1 residence. It is an enormous structure. Almost 10,000
2 square feet surrounded by a hundred acres of land. It
3 has a driveway that is over a quarter mile long and
4 360-degree views. The residence has a windmill, solar
5 panels. Can be powered either on or off the grid and
6 has an enormous generator that can power the entire
7 house. Although the residence would seemingly be
8 impenetrable based upon its location, Edward and Elaine
9 Brown and their supporters, their co-conspirators, left
10 nothing to chance.

11 Extensive effort was taken to fortify the
12 perimeter against the enemy, the United States Marshal
13 Service. Nailed to the many trees covering the entire
14 perimeter were containers of the binary explosive
15 compound Tannerite. Each container came conveniently
16 equipped with a bright orange viewing label and a
17 targeting site. If more Tannerite was needed, Edward
18 and Elaine Brown and their supporters need only take a
19 few steps into their garage where more was ready for
20 immediate use.

21 What was also clear was that Ed and Elaine
22 Brown experimented with zip guns, what Ed Brown now
23 calls noise makers, as yet another way to guard against
24 the United States Marshal Service attempting to enter
25 their property.

1 As the testimony made clear, zip guns are
2 booby trap devices. They are man-made firearms
3 consisting of a pipe, a spring, a cotter pin, trip wire
4 and ammunition consisting of .12-gauge shotgun rounds.

5 When an unsuspecting individual such as a law
6 enforcement officer attempting to effectuate a lawful
7 arrest walks into one of them, the cotter pin is pulled
8 and the weapon fires.

9 Edward and Elaine Brown's garage included the
10 elements of zip guns in the process of being made and
11 finished. But the garage wasn't the only area used to
12 manufacture lethal weapons to use against law
13 enforcement. The basement, as you saw during the course
14 of the testimony, was also utilized by Ed and Elaine
15 Brown and their supporters.

16 So, next to enough food and alcohol and dry
17 goods to last a very long time were parts for the
18 manufacture of zip guns. The zip guns were located next
19 to extra parts for pipe bombs. And yet, ladies and
20 gentlemen, did this actually make you wonder, seeing
21 this picture, did it make you wonder why Ed and Elaine
22 Brown and their supporters would actually need more
23 parts for pipe bombs? As if 21 pipe bombs, all located
24 in their master bedroom, weren't already enough. 21
25 pipe bombs weren't enough for Ed and Elaine, and there

1 would never be enough pipe bombs available to Ed and
2 Elaine because they and their supporters wanted action.
3 It's exactly what they wanted. What better way to
4 advertise your cause than to engage in a bloody and
5 deadly battle with law enforcement.

6 They and their co-conspirators intended to use
7 every weapon available against law enforcement,
8 including IED's, improvised explosive devices, which you
9 also heard referred to as Goex can bombs. They would
10 use IED's with nails and ones without nails. They kept
11 the IED's throughout their house, in their bedroom, in
12 the safe in the master bedroom, and the library hallway
13 overlooking the foyer, in the laundry room, even in
14 Elaine's kitchen jelly cabinet. Whatever it took,
15 ladies and gentlemen, they were not going to surrender.

16 And yet, as if the litany of pipe bombs and
17 IED's weren't enough, Ed and Elaine Brown fortified
18 their residence with every conceivable firearm
19 imaginable. The house was a virtual armory of deadly
20 firearms, and the weapons were strategically positioned
21 at windows so they could be used against law
22 enforcement.

23 Do you recall that when Assistant United
24 States Attorney Huftalen asked Deputy Marchegiana one of
25 the very last questions of his testimony, Mr. Huftalen

1 placed up this photograph on the screen, and then he
2 asked Deputy Marchegiana where he was in relation to the
3 house, and Deputy Marchegiana's testimony was he was
4 approximately 80 yards away from the house. What Deputy
5 Marchegiana didn't know then but what you absolutely
6 know now is that covering Deputy Marchegiana's position
7 was a .50-caliber firearm. This is the firearm, ladies
8 and gentlemen, which you heard is capable of firing up
9 to three miles. A weapon which would blow a human body
10 apart. But this wasn't the only firearm utilized by Ed
11 and Elaine Brown.

12 Along with the .50-calibers was a Vanguard
13 .308-caliber rifle, a Ruger rifle, a .12-gauge shotgun,
14 all located in their bedroom in close proximity to the
15 most advantageous point, the French doors next to Mr.
16 Teddy Bear. And ladies and gentlemen, if Ed and Elaine
17 Brown needed ammunition, their residence was well
18 stocked. You certainly heard that. They had over
19 60,000 rounds of ammunition at their disposal, an amount
20 which was shocking to law enforcement, but what Ed Brown
21 characterized when he testified yesterday, he testified
22 that that was moderate by today's standards. 60,000
23 rounds might be moderate based upon who Ed and Elaine
24 Brown hang out with, but that much ammunition should be
25 horrifying to anyone else.

1 With respect to the firearms, ladies and
2 gentlemen, defense counsel did something interesting.
3 They did this with numerous law enforcement witnesses.
4 They attempted on cross-examination to infer that law
5 enforcement officers the night of Ed and Elaine Brown's
6 arrest on October 4th moved those weapons closer to the
7 window. Do you honestly think that these highly trained
8 law enforcement officers that night as they were walking
9 around the residence looking at 21 pipe bombs, 21 IED's,
10 more ammunition than they could ever count, it actually
11 occurred to them that this isn't enough evidence? We
12 better put some of these firearms that we see here
13 closer to the window. It's a ludicrous and preposterous
14 allegation. But the tables couldn't be turned for long,
15 ladies and gentlemen, because while on cross-examination
16 counsel for Edward and Elaine Brown were trying to lay
17 that inference, Ed Brown proudly stated yesterday that
18 he placed those weapons there.

19 Now, of course the testimony about what a
20 .50-caliber can do to a human being was shocking and
21 startling. But everything in Ed and Elaine Brown's
22 residence was shocking and startling. And if you think
23 what a .50-caliber weapon can do to a human body, if you
24 think that that's shocking? What do you think an IED
25 could do to the same body. And how do you think a human

1 being could ever survive being hit by or even being near
2 one of those pipe bombs that was in their bedroom. You
3 saw the enormous chemical reaction from a small
4 cannister of Tannerite. You saw it. Defense counsel
5 admitted that video tape into evidence. Don't you think
6 that an explosion from a GOEX can with nails taped to it
7 would make that Tannerite explosion seem like a mere
8 firecracker in comparison?

9 MR. IACOPINO: Your Honor, I object. There's
10 a slide show going on. There's no way for that to be
11 reflected in the record. She's not referencing these
12 exhibits that are being put up on the screen, and
13 there's no way for the record to reflect what's being
14 shown to the jury.

15 MS. OLLILA: I'll reference each exhibit, your
16 Honor, as I go along.

17 THE COURT: All right, she will do that.

18 MS. OLLILA: So ladies and gentlemen, it is
19 clear that Ed and Elaine Brown worked together to
20 accomplish this feat. But did they actually have
21 supporters and how do you know?

22 You know from the testimony that after the
23 return of the tax return evasion indictment, Ed and
24 Elaine Brown needed firearms and they had plenty of
25 money to obtain them. You know this because Deputy

1 Berry and Deputy Nunes both testified that they
2 accompanied members of the probation department to Ed
3 and Elaine Brown's residence on May 24th when Ed and
4 Elaine Brown had to turn over weapons.

5 Elaine Brown brought the deputies through the
6 house and she also brought them into the master bedroom
7 to an area where the safe was. She turned the
8 combination lock and opened the safe. What was in the
9 safe? A cube of money that both Deputy Berry and Deputy
10 Nunes testimony was about 12 inches high and 12 inches
11 wide. And you know that the money was left at the
12 residence. They both testified that no one touched the
13 money.

14 It is clear, then, that Ed and Elaine Brown
15 needed firearms and had plenty of money to obtain them,
16 yet their problem was that if they left the property,
17 they risked being apprehended by members of the United
18 States Marshal Service, so they recruited supporters.
19 Dena, please bring up 25. Supporters like Danny Riley.
20 Dena, please bring up Government's Exhibit 26.
21 Supporters like Cirino Gonzalez. And Dena, please bring
22 up 26a. And supporters like Jason Gerhard. They
23 recruited these supporters to bring them weapons. The
24 most obvious evidence of the presence of supporters like
25 Danny Riley and Cirino Gonzalez and Jason Gerhard lies

1 with the very firearms that were taken from Ed and
2 Elaine Brown's residence after they were arrested, after
3 their October 4th arrest.

4 You heard that Jason Gerhard, who lived in
5 Brookhaven, New York, was a staunch supporter of Ed and
6 Elaine Brown and was frequently at their home.

7 You heard in the testimony of Deputy Berry and
8 Deputy Nunes that Jason Gerhard got into a motor vehicle
9 accident on July 17th while driving Elaine Brown's motor
10 vehicle.

11 You also heard that the United States Marshal
12 Service seized Elaine Brown's car that night on
13 July 17th, and Jason Gerhard was not happy about that.
14 What did he do? He traveled the very next day on
15 July 18th to the Lebanon Police Department in order to
16 fill out a report of a theft.

17 Once there he met with Deputy Berry and Deputy
18 Nunes. And what did he tell them? He told them that
19 their attempt to arrest Ed and Elaine Brown was a
20 violation of the Constitution, constituted treason and
21 was punishable by death.

22 You also heard that two days after that
23 confrontation Jason Gerhard was stopped by Trooper Shawn
24 Harrington while he was in Charlestown, New Hampshire,
25 about 20 to 25 minutes from Plainfield. He approached

1 Jason Gerhard, and what he saw in the back seat of Jason
2 Gerhard's vehicle was this weapon, Government's Exhibit
3 5a-2.

4 You know that Jason Gerhard on that night,
5 July 20, 2007, had earlier purchased that weapon from
6 Albert Lindquist from the Alstead Gun Shop. You know
7 that because Albert Lindquist testified and showed the
8 paperwork for the purchase of the weapon. Dena, please
9 pull up Government Exhibit 13g on page one. The
10 paperwork shows that Jason Gerhard of Brookhaven, New
11 York, purchased two firearms, both Sturm Rugers, on
12 July 20th, 2007.

13 When law enforcement searched the residence of
14 Edward and Elaine Brown after they were arrested on
15 October 4th, they discovered the very same weapon that
16 Trooper Harrington saw in Jason Gerhard's vehicle. They
17 also recovered this Sturm Ruger. Both of these weapons
18 were located in the den cabinet, and both of the
19 firearms were purchased by Jason Gerhard at the Alstead
20 Gun Shop.

21 Dena, please pull up 30a-56.

22 Jason Gerhard also purchased the Bushmaster
23 semi-automatic assault weapon from the Alstead Gun Shop.
24 You know this because John DiBernardo, just like Albert
25 Lindquist, who also worked at the gun shop testified

1 about the purchase.

2 And yet perhaps the most deadly of all the
3 firearms purchased by Jason Gerhard for Ed and Elaine
4 Brown was this .50-caliber Serbu. Jason Gerhard
5 purchased the .50-caliber from the Alstead Gun Shop and
6 John DiBernardo was the clerk who handled the
7 transaction.

8 But as you heard, ladies and gentlemen, Jason
9 Gerhard wasn't the only supporter buying .50-caliber
10 firearms for Ed and Elaine Brown. Cirino Gonzalez from
11 Alice, Texas, and Danny Riley from Cohoes, New York,
12 each traveled from their homes all the way to New
13 Hampshire in order to purchase a .50-caliber weapon, and
14 you know this because you heard the testimony from
15 Richard Tatem at the Stone Eagle Gun Shop.

16 Please pull up Exhibit 2 at page two. No,
17 Dena, that's the wrong one. I'm sorry, you're correct.

18 The e-mail traffic between Danny Riley and
19 Cirino Gonzalez proves this point perfectly clear,
20 doesn't it? Look at Exhibit 2. It is an e-mail to
21 Cirino Gonzalez, and it discusses the purchase of a
22 .50-caliber Serbu, a manufacturer of .50-caliber
23 weapons. In the e-mail Danny Riley tells Cirino
24 Gonzalez, when he let's me know when they arrive, I will
25 go to Newport, New Hampshire and get it and then come to

1 you with it. I think you only need one for the house
2 unless you want one for your personal collection.

3 You know from the testimony of Richard Tatem,
4 the owner of Stone Eagle, that both Danny Riley and
5 Cirino Gonzalez picked up a .50-caliber. You have them
6 here. They're the two black .50-caliber weapons.

7 Now, when you ask yourselves whether the
8 evidence demonstrates that Ed and Elaine Brown recruited
9 supporters, ask yourself this. Does it really strike
10 you that the likes of Danny Riley and Cirino Gonzalez
11 and Jason Gerhard actually had the financial means to
12 purchase all of this weaponry? Danny Riley spent a lot
13 of time in Plainfield, New Hampshire. 13e-1, please,
14 Dena.

15 Does it strike you that Danny Riley or Jason
16 Gerhard could spend \$2,320 for a .50-caliber weapon? A
17 weapon that --

18 MR. IACOPINO: Objection, your Honor, there's
19 no evidence about Danny Riley's financial circumstances
20 in the record.

21 THE COURT: Overruled.

22 MS. OLLILA: A weapon that they would then
23 leave behind at Ed and Elaine Brown's residence. The
24 testimony made it abundantly clear that Ed and Elaine
25 Brown could afford to do so, although Elaine Brown was

1 the only Brown employed. She made a lot of money as a
2 dentist.

3 MR. IACOPINO: Objection. Not in the record.

4 THE COURT: Overruled.

5 MS. OLLILA: Throughout the trial you had
6 certainly seen some of the money that they had at their
7 residence. You heard about the money, the cube of money
8 contained in the safe in May 2006, and you saw some of
9 the money located in the master bedroom at the time of
10 the search after their arrest on October 4th.

11 Please pull up 30a-53, Dena. And you found
12 out yesterday through defendant Ed Brown what was
13 located in the elevator shafts. \$101,000 in U.S.
14 currency.

15 So, ladies and gentlemen, don't you think it's
16 obvious that Elaine Brown, through her dental practice,
17 could have financed the entire buildup of arms in order
18 to drive off law enforcement?

19 Ed and Elaine Brown and their supporters never
20 intended to have this end peacefully. They wanted
21 guerrilla warfare. Yet throughout the trial what they
22 have done is try to recast the die and somehow claim
23 that they only took up arms after the Danny Riley
24 incident on June 7th when members of the United States
25 Marshal Service Special Operations Group attempted and

1 planned to arrest defendant Edward Brown at the end of
2 the driveway while he was picking up his mail. They
3 were then going to negotiate for the peaceful surrender
4 of Elaine Brown.

5 The evidence of their theory that the only
6 time they were going to pick up arms was after June 7th
7 because they were so afraid after June 7th. The
8 evidence you've seen, the paper evidence, ladies and
9 gentlemen, disproves this argument in its entirety.

10 The events of June 7th also prove this. On
11 June 7th when Deputy Marchegiana was secreted in the
12 wood line, Ed Brown was patrolling the woods with poor
13 Zoe. As he was patrolling the woods, he had his Colt in
14 his hand, and he had this SA 85 strapped around his
15 shoulder.

16 If Ed Brown and Elaine Brown only took up arms
17 after June 7th, then how was it that Ed Brown on that
18 very day already had weapons at the residence?

19 And what about the testimony of Deputy Recor,
20 Deputy Ed Recor. His testimony was chilling. He was
21 the deputy who testified that after Danny Riley was
22 tasered on June 7th, he heard activity at the residence.
23 And within 10 to 15 minutes of hearing activity, he saw
24 defendant Ed Brown in the tower. And what did Ed Brown
25 have with him? He had a .50-caliber firearm and a box

1 of ammunition which Deputy Recor said he put on the
2 wall.

3 If Ed and Elaine Brown only took up arms after
4 June 7th because they were so afraid, how in the world
5 could Ed Brown miraculously have obtained a .50-caliber
6 weapon within moments of the Danny Riley taser incident.
7 And if they were so petrified after June 7th, then why
8 did they have Ed and Elaine's jamboree on June 23rd, a
9 few weeks later, and allow men, women and children, as
10 many men, women and children as could arrive, they
11 allowed on to their property.

12 But you certainly know that Ed and Elaine
13 Brown had weapons before June 7th because the testimony
14 of Shane McDonald, the RE/MAX franchise owner, made that
15 much clear. He testified that he went to their
16 residence on May 21st, 2007, two and a half weeks before
17 June 7th, because he wanted to negotiate the terms of a
18 lease for Elaine Brown's dental practice on Glen Road in
19 West Lebanon. While at the residence he saw Ed Brown
20 with a gun in his waist. And Shane McDonald was a funny
21 witness. He said he sat down at the dining room table
22 and he figured Ed Brown had a better negotiating
23 position because Ed Brown put the gun on the table.
24 What Shane McDonald also testified to was that as he sat
25 there he saw Reno, Cirino Gonzalez, please put up 26, a

1 short distance away in the kitchen with a weapon under
2 his arm. It was at this point, according to the
3 testimony of Shane McDonald, that he started to think he
4 might not have made a good decision.

5 Don't you think it was obvious, ladies and
6 gentlemen, from the testimony of Shane McDonald, that
7 the reason Reno, Cirino Gonzalez, was there, was to
8 protect Ed and Elaine Brown from being taken into
9 custody by law enforcement? And you know that Ed Brown
10 had that pistol described by Shane McDonald because he
11 purchased it -- Dena, please bring up 32m-1, he
12 purchased it on April 9th, 2007, two months before the
13 June 7th Danny Riley incident. And claiming that the
14 weaponry were only purchased after the Danny Riley
15 incident is also disproved by the fact that the
16 .50-caliber purchased by Danny Riley was purchased on
17 May 23rd, 2007, in Newport, New Hampshire, two weeks
18 prior to June 7th. Please bring up 13e-1, Dena. And
19 claiming that the weaponry and the firearms were
20 purchased by the likes of Cirino Gonzalez only after
21 June 7th in order to protect themselves is certainly
22 disproved by the fact that Cirino Gonzalez, just like
23 Danny Riley, purchased that .50-caliber on May 23rd, two
24 weeks prior to June 7th.

25 Please bring up 13f-1.

1 So why would Danny Riley and why would Cirino
2 Gonzalez travel from their residences in New York and
3 Texas, two weeks before June 7th, to purchase \$5,000
4 worth of firearms if they didn't have every intention of
5 using them to protect their leaders. Their leaders were
6 Ed and Elaine Brown. It's precisely what they were
7 doing. The purchase of firearms was all about their
8 desire to engage in an armed battle with the United
9 States Marshal Service on behalf of Ed and Elaine Brown.
10 But, try as they might, Ed and Elaine Brown just can't
11 hide from the facts -- please pull up 30a-66, Dena --
12 facts that demonstrate that the Bushmaster was purchased
13 by Jason Gerhard -- please bring up 13c, page two -- on
14 January 21st, 2007. Almost five months before Danny
15 Riley ever even dreamed of walking down the driveway
16 with Zoe to pick up the mail. Why would Jason Gerhard
17 travel from Brookhaven, New York, all the way to New
18 Hampshire five months before? He wouldn't. Just like
19 Danny Riley and Cirino Gonzalez, he was doing it because
20 he wanted to go to war, shoulder to shoulder, with Ed
21 and Elaine Brown.

22 This has nothing to do with Ed and Elaine
23 Brown's supposed fears after June 7th. It has
24 everything to do with the fact that Ed and Elaine Brown
25 thought themselves worthy of disregarding the law, and

1 they thought themselves worthy of disregarding the
2 jury's verdict as if it never existed.

3 The testimony also clearly established that
4 the Tannerite at the residence was ordered on May 28,
5 2007, 10 days before June 7th. 2d, please, Dena. Look
6 at the Government's Exhibit 2d. It's an e-mail from
7 Danny Riley to Cirino Gonzalez and it's dated May 28th
8 with the subject text kaboom. The e-mail demonstrates
9 the purchase of 50 pounds of explosives, Tannerite. You
10 know that the Tannerite ultimately ended up at Ed and
11 Elaine Brown's residence because the boxes with the
12 shipping labels containing Danny Riley's name and his
13 residence were located at the residence of Ed and Elaine
14 Brown after they were arrested in October.

15 But what else does the e-mail state? The
16 e-mail again sent ten days before June 7th says the
17 following. Turn to page two, please, Dena, and enlarge
18 that. Reno, I sent for 50 pounds of brown Skinnerite.
19 Hopefully it will be here when the other gear arrives.

20 If Ed and Elaine Brown only really wanted to
21 defend themselves after June 7th, what is he talking
22 about when he references when the other gear arrives?

23 And what about when he says, was Ed happy that
24 we are making progress? What progress is Danny Riley
25 referring to?

1 Please go to 2e, page two, Dena. How about in
2 another e-mail which Danny Riley sends to Cirino
3 Gonzalez, he says, are you guys scoped up? This e-mail
4 was sent on May 30th, one week prior to June 7th.

5 Scoped up for what, ladies and gentlemen?

6 The progress that Danny Riley was referring to
7 has everything to do with the literature found in the
8 residence of Edward and Elaine Brown. The literature
9 speaks volumes about the beliefs of Ed and Elaine Brown.
10 And here are just a few of their books. Government's
11 Exhibit 33a-6. Guerilla Warfare and Special Forces
12 Operations. Government Exhibit 33a-7. Unconventional
13 Warfare Devices and Techniques. Government's
14 Exhibit 33a-2. Unconventional Warfare Devices and
15 Techniques Incendiaries. Government's Exhibit 33a-8.
16 Booby Traps. Government's Exhibit 33a-3. The Anarchist
17 Handbook.

18 In Government Exhibit 33a-6 entitled Guerilla
19 Warfare and Special Forces Techniques, just page five in
20 this book alone so perfectly describes exactly what Ed
21 and Elaine Brown are all about, what they and their
22 supporters are all about. And this is what some of the
23 words say.

24 Resistance. Resistance is defined as the act
25 of opposition of one individual or group to another. A

1 resistance movement is the organized element of a
2 disaffected group which resists a government or
3 occupying power with means varying from passive to
4 violently active. Resistance movements begin to form
5 when dissatisfaction occurs among strongly motivated
6 individuals who cannot further their cause by peaceful
7 and legal means.

8 These words, ladies and gentlemen, and so, so
9 many more epitomize what they wanted. They wanted war.
10 So any new argument that the accumulation of 21 pipe
11 bombs, 20 IED's, deadly firearms, over 60,000 rounds of
12 ammunition, all accumulated in a short period of time,
13 is an attempt to engage in revisionist history in any
14 way possible to justify what they were doing.

15 Please go to Government 2i, page two, Dena.
16 Danny Riley made the point so clearly on August 4th when
17 he said, no one realizes it's militia time. And he also
18 said oh yeah, I forgot, the number one most important
19 thing, people should come and make a stand to their
20 death. Edward and Elaine Brown's stand and the stand of
21 their supporters, their grand stand included the use,
22 please pull up 39a-4, Dena, included the use of bombs
23 with nails taped to them, which is exactly why Danny
24 Riley's e-mail to his supporters, pull up 2i again,
25 Dena, and enlarge, which is exactly why Danny Riley's

1 e-mail to all their supporters requested, among a litany
2 of additional other information and materials, roofing
3 nails, bigger, better.

4 Make no doubt about it, though, ladies and
5 gentlemen. Ed and Elaine Brown intended to survive.
6 The nature of their character, which included a pulpit
7 in their own living room, please pull up 4f, Dena,
8 included a pulpit in their living room, the nature of
9 their character wouldn't allow for anything less but
10 their survival.

11 So while Danny Riley was sending out e-mails
12 imploring supporters to wage battle to their death, Ed
13 and Elaine Brown were busy fortifying all those places
14 in their residence where they were likely to be.

15 Their bedroom is a great example. 30a-47,
16 please. In one closet in their bedroom were two helmets
17 and two air cannisters, air tanks. 30a-46, please.
18 30a-50. And 30a-51. In Ed and Elaine Brown's changing
19 room off the master bedroom were two bulletproof vests.
20 30a-42. Every single one of the pipe bombs were located
21 in their master bedroom.

22 And the firepower present in their bedroom was
23 shocking. 30a-31. 30a-62. Even Ed and Elaine Brown's
24 master bathroom was equipped with a built-in tub and an
25 Enterprise Arms gun positioned close to the window. If

1 you got stuck in the bathroom there was a wooden crate
2 under that table, please large that, that had plenty of
3 extra ammunition available.

4 In order to get to the den where Ed and Elaine
5 Brown would have wanted to watch themselves on TV during
6 the nine-month standoff, you'd have to walk through the
7 library hallway. 30a-67. And 30a-72. And if the
8 Bushmaster firearm or the Benelli shotgun weren't enough
9 firepower for them, 30a-68, they could turn to one of
10 the seven improvised explosive devices on the library
11 shelf. 30a-61. The den itself came equipped with
12 plenty of firepower. Conveniently located next to the
13 TV clicker was another gun. 30a-59. 30a-75. And who
14 could actually get any exercise without the presence of
15 a .50-caliber sniper weapon at your disposal.

16 Elaine Brown also thought enough to have
17 detonation cord on her kitchen counter. Do you remember
18 when Ken Erickson testified about detonation cord? He
19 testified it was right next to a fruit bowl on the
20 kitchen counter. Detonation cord, ladies and gentlemen,
21 is what he said burns at 26,000 feet per second.

22 But let's address the issue which counsel for
23 Elaine Brown has raised. He made it a theme to point
24 out that Elaine Brown's fingerprints weren't on any of
25 the IED's or any of the bombs. But did this actually

1 surprise you? Because it shouldn't have surprised you.
2 Wasn't it clear that Elaine Brown's crucial role, not
3 her only role, but her crucial role was to be the bread
4 winner, to bring in the cash, to finance the entire
5 operation. And wasn't it clear that Ed Brown's role,
6 his primary role and the primary role of his supporters
7 was to actually make the IED's and the pipe bombs all
8 along while Elaine was cleaning teeth. In the same
9 vein, doesn't it make sense that Elaine Brown wouldn't
10 have any IED's or pipe bombs or semi-automatic assault
11 weapons lying around for dental patients to see. What
12 better way to scare off the dental patients than to have
13 an IED in the same room. It wouldn't have happened.

14 It makes sense, ladies and gentlemen. Ed and
15 Elaine Brown believed that they were in this for the
16 long haul. That's what they planned. They couldn't
17 possibly survive unless Elaine Brown kept the money
18 trail flowing.

19 That's exactly why the undercover team was
20 allowed into their home during the night of October 4.
21 They had just successfully recovered a lot of the items
22 from Elaine Brown's dental practice on Glen Road. They
23 broke in. The undercover team was welcomed as heroes to
24 Ed and Elaine Brown because they had just staged a
25 successful coup which meant that the flow of money and

1 therefore the continuation of their cause would live.

2 Why else were they celebrating on the porch with pizza
3 and beer?

4 So don't be sidetracked by any claim that poor
5 old Elaine was just a cog in the wheel. She was the
6 wheel that kept this conspiracy spinning.

7 And could Elaine Brown actually be claiming
8 that the actions of her husband and the actions of the
9 co-conspirators weren't reasonably foreseeable to her?

10 MR. LANGE: Objection, it's burden shifting.

11 THE COURT: Overruled.

12 MS. OLLILA: Was it puzzling to you, ladies
13 and gentlemen, when counsel for Elaine Brown questioned
14 two of the United States' witnesses about what was
15 contained in the other nightstand next to the master
16 bed. Although some of the witnesses, the witnesses
17 seemed somewhat puzzled by what counsel was doing,
18 counsel for Elaine Brown pushed on. Could Elaine Brown
19 actually be claiming that she had no knowledge of what
20 was going on in her very own home? One thing should
21 have been clear from the testimony of Ed Brown
22 yesterday. Elaine Brown did know what was going on in
23 her home. That's exactly why, when Ed Brown was asked
24 upon cross-examination by Mr. Huftalen, who brought the
25 SA 85, this weapon, into the home. Ed Brown let it slip

1 out. What did he say? He said my wife will remember
2 who did that. When Ed Brown was asked whether or not
3 Elaine Brown knew about weapons in the residence during
4 their initial arrest in 2006, once again he didn't think
5 before he spoke. He said of course she does. She knows
6 everything in the house. Of course she knows everything
7 in the house. Do you think that as Elaine Brown entered
8 the master bedroom to put the dust mop away, please
9 30a-45, or to even get her Yoga mat, 30a-40a, that she
10 would somehow miss the presence of a police flak jacket?

11 Hollow point ammunition. 30a-47, Dena. This
12 is the same hollow point ammunition which Ken Erickson
13 testified was used to kill big game. Think she'd miss
14 the military issue ballistic helmets, goggles,
15 pyrotechnic fuse, and two air cannisters? 30a-46,
16 please, Dena. And do you think that as Elaine Brown
17 laid in her bed in her nice linens, that she couldn't
18 see the pipe bombs and parachute flares and ammunition
19 stacked up on a baker's rack, 30a-40, less than ten feet
20 away from the edge of the bed on a closet which had no
21 door? Could it possibly be that Elaine Brown didn't see
22 the gas mask on her nightstand, 30a-57, or that when she
23 reached into her nightstand to get a candle, 30a-53, she
24 somehow missed the presence of a pocket smoke escaping
25 mask? Perhaps after Elaine Brown folded Ed Brown's

1 clothing and put it away in the dresser drawer she
2 neglected to see the knife, flashlights and night vision
3 goggles. 30a-56.

4 Ladies and gentlemen, I submit this to you,
5 the real Elaine Brown is the very woman who had this
6 Glock with her in her hand the night of her arrest when
7 she was on the porch with the undercover team. That's
8 the real Elaine Brown. She's not a shrinking violet.
9 That much is clear. And you certainly heard from her
10 husband when he testified yesterday. She carried
11 firearms on her, had for a long time, and shot weapons
12 at the residence.

13 What do you think that the presence of the
14 military ballistic vests, two of them, the two military
15 ballistic helmets, the two air supply systems, 21 pipe
16 bombs, 13 IED's, five deadly firearms, and thousands of
17 rounds of ammunition all in the master bedroom meant?
18 What it meant was even Elaine Brown wasn't headed to
19 that bunker. She was going to stand arm and arm, hand
20 in hand with her husband Ed, and they were going to
21 fight. They were going to fight and kill law
22 enforcement all because they didn't want to be taken
23 into custody.

24 I submit this to you, ladies and gentlemen,
25 the real Elaine Brown is the very woman who yelled such

1 vulgar profanities at the undercover team as soon as she
2 was arrested. She fell victim for a second time of a
3 ruse advanced by law enforcement.

4 Ladies and gentlemen, the battle that Ed and
5 Elaine Brown and their supporters wanted, never
6 happened, because the United States Marshal Service in
7 the District of New Hampshire had Ed and Elaine Brown's
8 number from the jump start. The United States Marshal
9 Service knew that Ed and Elaine Brown's cause would
10 eventually implode from within because it wasn't a cause
11 at all.

12 The United States Marshal Service knew that if
13 they acted with patience and deliberation they would
14 arrest their supporters one at a time and slowly close
15 the circle.

16 The United States Marshal Service also knew
17 that the fringe players would eventually fall away and
18 leave to either support another cause or simply drift
19 into the wind.

20 The battle they were looking for, the battle
21 they were hoping and praying for, never materialized.

22 The United States Marshal Service outsmarted
23 Ed and Elaine Brown and their supporters by a long shot
24 in every way and it is without a doubt that it must have
25 been incredibly difficult, but they prevailed, the

1 United States Marshal Service prevailed.

2 The number one goal at all times of the
3 Marshal Service was to insure that no one, not the
4 Browns, not their supporters, and not law enforcement,
5 was harmed in any way, and that is exactly what
6 happened.

7 From the date that Ed and Elaine Brown decided
8 to play by their rules, the United States Marshal
9 Service engaged in an unwavering plan for a peaceful
10 resolution. At the end of the day the false beliefs
11 perpetuated by Ed and Elaine Brown fell flat because
12 they were up against the United States Marshal Service,
13 true professionals, exactly what you would expect them
14 to be. True professionals whose solitary aim was to
15 comply with their duty to apprehend Ed and Elaine Brown
16 in a peaceful manner.

17 Although, please pull up li, Dena, although it
18 took almost nine months, law enforcement never wavered
19 in their approach. Even in the bitter end. Law
20 enforcement officers who moments earlier had a loaded
21 weapon pointed at them, acted with professionalism,
22 generosity and humanity toward two individuals who would
23 have killed them in order to avoid apprehension.

24 Ladies and gentlemen, the evidence in this
25 case has established that Ed and Elaine Brown did

1 everything in their power to forcefully resist, impede
2 and prohibit law enforcement officers from taking them
3 into custody.

4 The United States asks you return the only
5 verdicts consistent with the evidence in this case, and
6 those are verdicts of guilty. Thank you.

7 THE COURT: Thank you. I'll see counsel for
8 just a moment.

9 AT SIDEBAR

10 THE COURT: Are the defendants requesting any
11 curative instructions?

12 MR. LANGE: I think some of the government's
13 argument --

14 THE COURT: I want to give you an opportunity.

15 MR. LANGE: -- was based on speculation, went
16 beyond what could be reasonably inferred from the
17 evidence. I'd just ask the court to instruct the jury
18 that what the lawyers say is not evidence.

19 THE COURT: I will do that in any event in my
20 closing instructions.

21 MR. LANGE: And they --

22 THE COURT: I don't want to do that right now
23 because then it looks like I'm applying it to you.
24 Okay, so if you want, I'll do it, but I don't want it to
25 look bad. Okay, so you're not asking. Any other --

1 anything else?

2 MR. IACOPINO: I join in his request.

3 THE COURT: Anything else?

4 MR. IACOPINO: Nothing else.

5 THE COURT: Okay. That's it.

6 BEFORE THE JURY

7 THE COURT: All right, ladies and gentlemen,
8 we're going to take a ten-minute recess and then we will
9 hear additional closings.

10 Don't make up your minds. We have more to go.
11 Don't discuss the case.

12 I am told you have lunch. We're going to let
13 you eat.

14 (Jury exited the courtroom.)

15 THE COURT: All right, we're in recess.

16 (Recess at 2:00 p.m.)

17 BEFORE THE JURY

18 THE COURT: Mr. Lange, the jury will be
19 pleased to hear from you.

20 MR. LANGE: Good afternoon.

21 THE JURY: Good afternoon.

22 MR. LANGE: I'm not going to be long. I'm
23 going to ask you people to do what you took an oath to
24 do, which is very simply consider the evidence that's
25 presented here in the courtroom, apply your common sense

1 to that evidence, and apply the instructions which come
2 from his Honor, the judge. That's what my client,
3 Elaine Brown, is entitled to, that's what you've agreed
4 to do.

5 This case should not be decided based on
6 eloquence or some theory of guilt by association or
7 character assassination. The case should be decided by
8 you people based on the evidence and on the law.

9 The question for you is what has the
10 government proven beyond a reasonable doubt. Beyond a
11 reasonable doubt is just what those words apply. It
12 applies the use of your common sense and your common
13 experience.

14 What has the government proven in this case
15 with regard to Elaine Brown, and you consider each
16 defendant separately, beyond a reasonable doubt.

17 Well, they have proved that she possessed
18 this. They have proven that beyond a reasonable doubt.
19 This is the Glock that she had when she was arrested at
20 her home on October 4th of 2007. They have not proven
21 beyond a reasonable doubt that she possessed the
22 firearms. There's lots of them there.

23 When you go back to the courtroom, you will
24 have the judge's instruction about what possession
25 means. It comports with your common sense.

1 To possess something is to have actual
2 possession of it. There is no indication that Elaine
3 Brown actually possessed any of those formidable
4 firearms, all 17 of them, other than the pistol, and
5 that is a firearm, no question about it.

6 Possession can also include what is call
7 constructive possession. And that means you have the
8 power and intention to exercise control over something.
9 There is no sufficient evidence to prove that my client
10 had the power and intention to exercise control over
11 those firearms. And I'll try to explain to you, as
12 succinctly as I can, why that matters.

13 It is also abundantly clear that the
14 government has not met its burden to prove that she
15 possessed or used in furtherance of anything the
16 destructive devices, and I'll try to remember the
17 witness's name, I believe it's Michael Powell. He was
18 the explosives or ordnance enforcement officer from the
19 Bureau of Alcohol, Tobacco and Firearms. I asked him
20 very few questions, but you will recall one of the
21 things I asked him about was the Glock. I held the
22 Glock up, brought it up there, asked him if it's a
23 firearm, and he said yes, it's a firearm. I asked him
24 if it was a grenade or if it was a mine or if it was a
25 missile or if it was a rocket, a booby trap or something

1 like that, and he said no. What he was telling you was
2 was that firearm was not a destructive device.

3 The Goex cans, destructive device. The what
4 has been called zip guns, destructive device, pipe bombs
5 may all be true, but the government has not linked those
6 items to my client. Yes, she knew about them. How
7 could she not. She lived in the same house with her
8 husband, but that does not mean that she had the
9 dominion and control over those items.

10 Now, the government was very eloquent in its
11 closing argument about remember how it was always Ed and
12 Elaine, Ed and Elaine, Ed and Elaine. Of course it's Ed
13 and Elaine. They are married. And it's abundantly
14 clear from the evidence that they were both convicted
15 across the hall back on January 18th of 2007. But she
16 was released. She went down to stay with her son David,
17 the fellow you heard from this morning, stayed there a
18 period of time, and then she went back. And that's one
19 of the counts in this case. It will be up to you to
20 decide whether that constitutes a crime. The judge will
21 explain those elements. I leave that to your common
22 sense and your good judgment.

23 She came back, she came back because she
24 missed her husband, and David the son described how much
25 happier she was back where she belonged. Home is the

1 place you go where they have to take you in, and that's
2 where she went.

3 She had also been convicted of a felony as of
4 January 18, and she clearly, as I've already told you,
5 the evidence told you, what I tell you is not evidence,
6 what the prosecutor says is not evidence, we can comment
7 on it, you decide what the evidence is, she also
8 possessed the firearm after that conviction. Again,
9 that's one of the counts in this case. It will be up to
10 you to decide if the evidence supports a verdict in that
11 count.

12 You're going to be given a jury verdict form,
13 and basically you will work through it. The counts
14 about being a felon in possession, failure to appear at
15 sentencing, they are toward the end of the form. You
16 will have a form for each of the two defendants.

17 The government said, oh, Elaine in particular
18 is trying to justify the Glock because of what happened
19 with Danny Riley. You know what happened to Danny
20 Riley. He was tasered, he was shot at, he was taken
21 into custody. There was a show of force, multiple
22 cruisers, 170-odd law enforcement personnel, New
23 Hampshire National Guard. You know it was all there.
24 There is no evidence that prior to that date my client,
25 Elaine, had any firearms. You will decide whether the

1 possession of firearms after that constitutes offenses
2 as indicated in Count Six, particularly in Count Six.

3 What I want to turn to now is what's a
4 conspiracy. And I submit to you that my client is not
5 guilty of conspiracy. A conspiracy is an unlawful
6 agreement to break the law. I submit to you what she
7 did when she went home is simply to do what she felt she
8 had to do as a loyal wife. I also submit to you that
9 she did not possess a firearm in furtherance of a
10 conspiracy, but that's the charge.

11 And even if she may have possessed a firearm,
12 you decide beyond a reasonable doubt that she possessed
13 a firearm in furtherance of a conspiracy. That's one of
14 the counts on the form. She certainly did not possess,
15 either directly, constructively, or in any other way,
16 shape or form, a destructive device. There is no
17 evidence that she had anything to do with putting those
18 Goex cans there, putting those pipe bombs there, putting
19 the zip gun cans there or installing the flash bang
20 Tannerite that was up in the trees.

21 So I'm going to end simply where I began. I
22 just ask you to do your jobs. I ask you to apply the
23 law to the evidence as you find it, and when you do
24 that, you will return a just and fair verdict as to my
25 client. Thank you.

1 THE COURT: Thank you, Mr. Lange. Mr.
2 Iacopino.

3 MR. IACOPINO: Thank you, your Honor. Good
4 afternoon.

5 THE JURY: Good afternoon.

6 MR. IACOPINO: One of the hardest things I
7 think any criminal defense lawyer has to do is come
8 speak to juries at the end of the case and sort of tie
9 it altogether and explain to you why my client, a living
10 breathing human being, should be found not guilty. And
11 I always find refuge in talking about something the
12 judge will speak to you about, two things, actually, the
13 presumption of innocence and the burden of proof.

14 No matter what you believe about Edward
15 Brown's political beliefs and ideologies, no matter
16 whether you believe he's right or wrong with his
17 observations about the government, the tax system or the
18 court system, he still sits in this courtroom a living
19 breathing human being who enjoys the presumption of
20 innocence.

21 That means that he was innocent when he came
22 walking into this courtroom on the very first day. That
23 means he's innocent, as I don't know how many government
24 employees came up and testified against him, he's
25 innocent as he sat there and told you his side of the

1 story. And he'll remain innocent even while the
2 government's very eloquent closing was given. He
3 remains innocent through my closing, and even through
4 the judge's charge to you, his instructions to you of
5 the law, and he remains innocent even as you go back
6 into that jury room back there, unless after
7 consideration of all the evidence, second point, you all
8 12 unanimously agree that the government has born the
9 burden of proof and that they've born that burden with
10 respect to each element of each charge beyond a
11 reasonable doubt.

12 That doesn't mean that it's he may have
13 committed these crimes, ladies and gentlemen. Doesn't
14 mean that he probably committed these crimes. Doesn't
15 mean that he possibly committed. The burden of proof is
16 much higher than that. It's proof beyond a reasonable
17 doubt. The judge will tell you it's not proof beyond
18 all doubt, but it's proof beyond a doubt based on
19 reason. And the government has failed to do that in
20 this case, despite the parade of witnesses, despite the
21 various exhibits that they have presented to you and,
22 well, through the court, have presented as evidence,
23 they have failed to carry that burden.

24 And we know that they've failed to carry that
25 burden because each of these offenses, or the burden

1 that they carry with respect to each of these offenses,
2 is to prove not only that Edward Brown took some action,
3 but that he had some type of criminal intent.

4 The judge will tell you with respect to Counts
5 One and Two and a couple of the other ones, excuse me if
6 I don't have this all written down, but that for several
7 of these counts, but most particularly Counts One and
8 Two, Edward Brown must have acted willfully, in other
9 words, with a willful intent to commit a crime. The
10 judge will tell you that under our law, willfully means
11 to act voluntarily and intelligently and with the
12 specific intent that the underlying crime be committed.
13 That is to say, with bad purpose either to disobey or
14 disregard the law, and not to act by ignorance, accident
15 or mistake.

16 And with respect to Counts One and Two of this
17 indictment the government has to prove that Edward Brown
18 acted willfully.

19 The reason why the government can't do that
20 was told to you by Edward Brown himself, and I'll get to
21 that in a minute with respect to Counts One and Two.

22 But before we do that I want to go to the --
23 some of the other counts first. I want to specifically
24 address with you the charge of failure to appear for
25 trial, which I believe against Ed Brown is count number

1 10 -- 9 in the indictment, and failure to appear for
2 sentencing with respect to Edward Brown is count -- it's
3 either 10 or 11, I don't have it specifically here. The
4 judge will tell you what the elements of those charges
5 are. One of them is that he has to act willfully also
6 for those charges. But also the judge will tell you
7 that the action in that case is that he must have
8 willfully failed to appear for trial, and then the
9 important words that you will hear in these
10 instructions, as required on January 12, 2007.

11 During the government's closing they put on
12 their little slide show and one of the exhibits that
13 they provided in the slide show is this one. It's
14 Exhibit 1a-2. This is the order setting the conditions
15 of release for Edward Brown for his tax trial. This is
16 the only piece of paper that gives you any evidence of
17 what Edward Brown was required to do when it came to
18 appearing for trial or even for sentencing. If you look
19 on this piece of paper, there is nothing in here that
20 sets a date. In fact, one of the check-offs has a place
21 for the court to actually write in a date and time to
22 appear. There's nothing there. It says as required.
23 And the government has provided no other piece of
24 evidence showing you that this defendant was ordered to
25 appear for court or on the day that he was there,

1 ordered to come back the next day. Doesn't exist.
2 Doesn't exist in this case. He was never ordered to
3 appear. He was never required to appear because that's
4 how courts require things. They order it. And
5 likewise, there's no piece of paper that says he was
6 required to appear in April for sentencing.

7 You did see Exhibit 1c. They put that up in
8 their slide show during closing argument as well, a
9 bench warrant for the arrest of Edward Brown. Look at
10 it closely. It's not addressed to Edward Brown, ladies
11 and gentlemen. Not at all. It's addressed to the
12 United States Marshal. And there's no evidence that
13 you've heard that this was ever provided to Mr. Brown.
14 What you heard was that some time after sentencing a
15 letter may have been sent to him informing him that he
16 had been both tried and sentenced, but that is not an
17 order to appear in court for sentencing, nor is it an
18 order to appear at the trial.

19 The government has not met their burden,
20 ladies and gentlemen, when it comes to the charges of
21 failure to appear for trial against Ed Brown or failure
22 to appear for sentencing against Ed Brown.

23 As I indicated, I'm going to return in my
24 argument to Counts One and Two, the conspiracy counts.
25 That same criminal intent requirement is part of the

1 government's burden of proof with respect to those two.
2 Two charges. Must act with a specific intent that the
3 underlying crime be committed with a bad purpose either
4 to disobey or disregard the law, not to act with
5 ignorance, accident or mistake.

6 And you heard the prosecutor ask you to draw a
7 lot of inferences in her closing argument to you. And
8 admittedly, nobody can know what somebody's intent is
9 because you're not them. Intent is a mental process.
10 But in this particular case, ladies and gentlemen, you
11 heard from Ed Brown. He came right up here and took the
12 witness stand and told you what his intent was. His
13 intent was to live. Not to commit a crime.

14 You may not like Ed Brown, you may not have
15 liked his behavior on the witness stand, but he told you
16 things that I'm sure you were surprised to hear. He
17 told you that he had weapons even before June 7th. Told
18 you he had three of them. He told you about things that
19 I'm sure the government was happy to have him testify
20 about because it really didn't help his case too much.
21 What do you take from that? You take from it even
22 though I don't like the guy, I've got to believe him.
23 He's willing to tell me the truth, even if it hurts his
24 case. And that's what he did. And he told you that
25 this started long before January 12th in his mind. He

1 told you how when there was a siege at Waco he took the
2 step of calling up the United States Department of
3 Justice Attorney General's Office. Of course he did not
4 get Attorney General Janet Reno at the time. No, he got
5 somebody, some clerk somewhere who was tasked with
6 taking his suggestion. He told you how that made an
7 impression on him. He told you about Ruby Ridge. He
8 told you about the videos that they had of Waco and Ruby
9 Ridge in their home.

10 Well, that's the early nineties. But he also
11 told you that in 2004 his wife's dental practice was
12 beset upon by 30 agents. And he told you that there
13 were snipers there. And that was confirmed by Shawn
14 Farnsworth who had gone up on the hill to buy supplies
15 and saw the snipers setting up. This was to search
16 Elaine Brown's dental practice to download something
17 from her computer, something Ed Brown told you if they
18 had simply asked, we would have given it to them. That
19 informs Ed Brown's mental state for your purposes here
20 today, ladies and gentlemen.

21 And in 2006 this ruse that they used to arrest
22 him on the tax case, again, more agents, snipers, called
23 them in from other jurisdictions. One of those
24 deputies, though, told you, hey, I thought I could have
25 arrested him while he was doing yard work in April right

1 in the backyard of the dental practice. I felt I could
2 have done that reasonably.

3 But that's not what happened. That's not what
4 informed Ed Brown. It wasn't one or two officers
5 saying, Ed, we have a warrant for your arrest, you have
6 to come with us. It was, again, 20 or 30 agents and
7 snipers in a ruse. That informs Ed Brown's mental
8 intent, ladies and gentlemen.

9 And then after he comes to court he's led to
10 believe, as he told you, that his wife would go with the
11 probation officers to get the guns out of the house.
12 Was that me? I'm sorry.

13 THE COURT: It's the microphone, malfunction.
14 You can move it out of the way.

15 MR. IACOPINO: Thank you, your Honor. Sorry,
16 that scared me. But it tells you that probation was
17 supposed to go with his wife into the house. The
18 marshals weren't supposed to go into the house until she
19 was there. But what did you hear. Not just from Ed,
20 but from the marshal who had come over from Vermont for
21 the second time. What did you hear? Oh yeah, we were
22 in the house before she got there. That's what we were
23 tasked to do. That, ladies and gentlemen, informed Ed
24 Brown's mental intent. That informed his mental state.

25 June 7, 2007, 174 law enforcement officers,

1 armed personnel carriers, snipers, lethal and non-lethal
2 weapons, ghillie suits. That informed Ed Brown's mental
3 intent, ladies and gentlemen.

4 Having a concert or a get together and have
5 the Department of Homeland Security helicopter that you
6 saw in the video presented by Mrs. Brown buzzing for 4
7 to 5 hours, you heard that testimony, that informed
8 Edward Brown's mental state. That informed his intent,
9 ladies and gentlemen.

10 I suggest to you that's not too hard to
11 believe Ed Brown when he says to you I was not willfully
12 attempting to break any laws. I was trying to live.
13 They were going to kill me. I wanted to live. And
14 that's why I did what I did. That's why he got up on
15 the witness stand and told you that. Because it was
16 true. And if the government does not prove that he
17 acted willfully beyond a reasonable doubt, then you must
18 apply that second grade principle that I talked about,
19 the burden of proof. If they don't prove it, he's not
20 guilty. And if you find him not guilty on Counts One
21 and Two, ladies and gentlemen, you must necessarily by
22 law find him not guilty on Count Three, the use of a
23 firearm during a crime of violence.

24 Again, I'm going to feel like Randy Jackson
25 from American Idol. I want to keep it real here with

1 you. Ed Brown was not polite on the witness stand. He
2 was not the most gentlemanly guy. He didn't take
3 direction well. But under our law he's still innocent
4 and you still have to give him the same consideration
5 that you would give to any other person who sat up there
6 and was polite and nice and took direction well.

7 And at the beginning of this trial I asked you
8 to make sure that you gave the Browns a fair shake.
9 That's one of the things that I mean about that. You
10 have to give him a fair shake, and that's one of the
11 ways that you have to do it.

12 A couple of other things I want to address.
13 The prosecutor suggests that Ed Brown recruited people.
14 And I will submit to you that the evidence of Ed Brown
15 recruiting anybody is thin, if it exists at all, and it
16 certainly does not rise to a level of proving something
17 beyond a reasonable doubt.

18 The government provided you with
19 communications of two gentlemen through e-mails. Those
20 communications did not come from Ed Brown. They didn't
21 come from Elaine Brown. There's absolutely nothing in
22 the evidence to suggest even how Dan Riley, Jason
23 Gerhard, this guy Reno Gonzalez, how they even met Mr.
24 Brown. The government has not presented you with any
25 evidence like that. So to suggest that he recruited

1 them as some kind of conspiracy just doesn't carry
2 water.

3 The burden of proof is with the government,
4 ladies and gentlemen, and in order to properly put the
5 government to their burden I beseech you that you not
6 engage in the assumptions that Ms. Ollila asked you to
7 engage in.

8 She asked you to consider where would Danny
9 Riley get the money to buy a gun. Well, the government
10 didn't present any evidence to you of what Danny Riley's
11 wherewithal was. They didn't even let you know if he
12 had a job or not. All they did was show you his picture
13 after his arrest. Of course it's an after an arrest
14 photo. And from that picture she wants you to make an
15 assumption about his financial condition. Don't do it.
16 There's no evidence of it. Hold her to the burden of
17 proof. Don't let her get away with rhetorical
18 flourishes.

19 Another thing in the government's argument.
20 She tried to accuse the defense, the defense, everybody
21 at the back here, of recasting the die. In essence what
22 she did, she made what's called a straw man argument,
23 ladies and gentlemen. A straw man argument is an
24 argument like a scarecrow full of straw. It's easy to
25 beat down. And if you consider the argument made by the

1 government, a lot of it was exactly that way. She would
2 exaggerate the things that she claimed were our claims,
3 and then beat them down. Don't fall for it. She's
4 asking you to assume things. The burden is right here,
5 and that burden is proof beyond a reasonable doubt on
6 every element, including the element that my client
7 acted willfully, with bad purpose, with the intent to
8 commit the underlying crime.

9 You have ample evidence that Edward Brown's
10 mental state was not that of somebody who was willfully
11 intending to commit a crime. He wanted to do one thing,
12 ladies and gentlemen, he wanted to live, and therefore
13 you should return verdicts of not guilty.

14 THE COURT: Thank you, Mr. Iacopino. Mr.
15 Huftalen.

16 MR. HUFTALEN: Thank you, your Honor. The
17 government and Mr. Iacopino agree on at least one thing.
18 Mr. Brown wanted to live. That's where we part company.
19 He wanted to live his way, and anybody who wouldn't let
20 him live his way, he'd kill. Period.

21 If the evidence in this case has not proven to
22 you beyond a reasonable doubt that the gentleman seated
23 at the back table, Mr. Brown, is guilty of the charges
24 in the indictment, nothing that I can say right now is
25 going to change your mind.

1 So let's talk about Elaine Brown. Mr. Lange
2 spoke very clearly, very succinctly, and very
3 persuasively with respect to her possessing destructive
4 devices. When Judge Singal gives you the law, and he
5 will in a few minutes, listen carefully to what he says
6 about a conspiracy. I expect that what he'll tell you
7 is that a conspiracy is an agreement, spoken or
8 unspoken. I expect that he'll tell you that the
9 conspiracy does not have to be a formal agreement or
10 plan in which everyone involved sat down together and
11 worked out all the details. That's what a conspiracy is
12 in the law. Your common sense and the evidence in this
13 case will make it clear to you or have made clear to you
14 that she was a member of a conspiracy. She just was.
15 She financed it. She fed it. She cleaned up after it.
16 And she held a gun on some of the outsiders to protect.
17 She was a member of a conspiracy. She just plain was.

18 From that point Mr. Lange then went on and
19 talked about whether she possessed booby trap devices or
20 Goex cans with or without the nails, or pipe bombs, and
21 there's no evidence in this case that she touched any of
22 them, that she picked them up, that she held them, that
23 she built them, that she put them on the shelves. But
24 what there is in this case is a whole lot of evidence
25 that they were there. And there's a whole lot of

1 evidence that she was there. She was there, they were
2 there, she saw them.

3 Mr. Brown admitted yesterday that he made the
4 pipe bombs. That he made the zip guns, spring guns,
5 booby trap devices, whatever you call it. That he put
6 the nails, the shrapnel, if you will, on the homemade
7 bombs, the IED's. He did all of that. He did it in
8 furtherance of his intention not to be taken into
9 custody. He did that in furtherance of the two
10 conspiracies that he's charged with. He did it to
11 hinder, to prevent, to obstruct by threats of violence
12 and otherwise, the U.S. Marshal Service from arresting
13 him on a lawful warrant. That's what he did.

14 I suspect, or I expect, that another part of
15 the law that Judge Singal is going to talk to you about
16 goes as follows:

17 If you find beyond a reasonable doubt that a
18 defendant, Mr. Brown, was guilty on the conspiracy
19 charged in Count One or Count Two, then you may also
20 find that defendant -- this defendant, Elaine Brown
21 rather, guilty of carrying and using or possessing a
22 firearm in connection with a crime of violence. It
23 sounds peculiar, but listen to the law as the judge
24 gives it to you. If Mr. Brown is guilty of carrying,
25 using, possessing the destructive devices in furtherance

1 of, or the guns and firearms in furtherance of, and all
2 destructive devices are firearms, but all firearms
3 aren't destructive devices, you'll hear that too, if you
4 find that Mr. Brown and Mrs. Brown were in the
5 conspiracy, and if you find that Mr. Brown possessed,
6 carried or used the destructive devices in furtherance
7 of, and you find that it was, and listen carefully to
8 hear this, it was reasonably foreseeable to Mrs. Brown
9 that Mr. Brown would do this, that's it. She's guilty.

10 So listen carefully to the law. No one
11 nowhere, no one in this room, no one anywhere, I submit,
12 likes to sit in judgment of another human being. It's
13 an uncomfortable thing to do. It's a difficult thing to
14 do. But sometimes you have to look at the facts and you
15 have to say it is what it is, I'm sorry, but it is what
16 it is. And this is what you've seen since Tuesday of
17 last week. This. AUSA Ollila didn't exaggerate or
18 embellish the evidence in this case. You've seen it.
19 Some of it you'll touch. You will never forget it.
20 This case clearly, beyond all doubt, not just beyond
21 reasonable doubt, the evidence in this case clearly
22 proves beyond all doubt that Ed Brown, who was going to
23 kill anybody who came to arrest him, that's it, that's
24 the case.

25 We were here Tuesday, Wednesday, Thursday,

1 Monday, Tuesday, but that's what it boils down to. You
2 all know it. And when you hear the instructions that
3 Judge Singal gives you, you will understand that whether
4 Elaine Brown touched, picked up, isn't the critical
5 point. The critical issue is, was it reasonably
6 foreseeable to her that he would, and I submit to you
7 that the evidence is beyond all doubt that it was
8 reasonably foreseeable.

9 I am holding this gun. Is it reasonably
10 foreseeable that I will hold this gun? It's an absurd
11 rhetorical question.

12 When you walk back in that room in a couple
13 minutes, or several minutes after you listen to Judge
14 Singal's instructions, you will take three things with
15 you. The facts which are spread all over this courtroom
16 and are inside your memory, your collective memory from
17 the witness stand, the law which you will get from Judge
18 Singal, and only from Judge Singal, the third most
19 important thing you will take back, or equally important
20 thing with no disrespect intended to the court, is your
21 common sense. You know exactly what went on here. And
22 although your heart may go out to some people who are
23 involved, the facts speak for themselves. Thank you
24 very much.

25 THE COURT: Thank you, Mr. Huftalen.

1 MR. IACOPINO: Your Honor, may we approach
2 before you begin your charge?

3 THE COURT: Of course.

4 AT SIDEBAR

5 THE COURT: Before you do, counsel, you've
6 seen the revised jury verdict form. Does anyone have
7 any objection to that?

8 MR. LANGE: I have no objection to the form,
9 your Honor.

10 MR. HUFTALEN: No.

11 THE COURT: Now what can I do for you, Mr.
12 Iacopino?

13 MR. IACOPINO: Before you asked if we wanted
14 you to make curative instructions to the jury. I would
15 ask that you do so based on Mr. Huftalen's rebuttal
16 argument. He stated that Elaine Brown held a gun on
17 agents, and that really wasn't any evidence that I think
18 is even fairly in the record and I think that it would
19 be important for the court to remind the jury of that
20 fact.

21 THE COURT: Go ahead.

22 MR. HUFTALEN: W. S. William Robertson who was
23 the undercover said that she held the gun and covered
24 the two of us.

25 THE COURT: I'm going to let the jury decide

1 what the facts are. That's a classic. Any other
2 requests for curative instructions?

3 MR. HUFTALEN: Not from the government.

4 MR. IACOPINO: Not right now.

5 MR. LANGE: Are you going to include in your
6 general instruction that what the lawyers say is not
7 evidence?

8 THE COURT: You'll see it in there. You have
9 it. We're going to take a ten-minute break before I
10 give them instructions.

11 BEFORE THE JURY

12 THE COURT: Ladies and gentlemen, we'll take a
13 ten-minute break and I'm going to give you jury your
14 instructions and then you're going to go deliberate.
15 Jury is excused for ten minutes.

16 (Recess taken.)

17 BEFORE THE COURT

18 THE COURT: Before we bring the jury in,
19 counsel, the clerk advises that counsel has agreed to
20 the redacted indictment. Is that correct?

21 MR. HUFTALEN: Government agrees.

22 MR. IACOPINO: Yes.

23 MR. LANGE: Yes, your Honor.

24 THE COURT: So that's what we will send in.
25 And are we ready for the jury?

1 MR. IACOPINO: Yes.

2 MR. HUFTALEN: Yes.

3 THE COURT: Bring in the jury, please.

4 THE CLERK: Yes, your Honor.

5 BEFORE THE JURY

6 THE COURT: Members of the jury, I'll now give
7 you your final jury instructions. These instructions
8 will be in three parts. First, general rules that
9 define and control your duties as jurors. Second,
10 definitions of the elements of the offenses charged in
11 the indictment -- in other words, what the government
12 must prove to make its case. And third, some rules for
13 your deliberations in the jury room and the return of
14 your verdict. This is not going to be a memory contest.
15 I'm going to be sending a written copy of these
16 instructions with you into the jury room.

17 It is your duty to find all of the facts from
18 the evidence admitted in this case. To those facts you
19 must apply the law as I give it to you. The
20 determination of the law is my duty as the judge. It is
21 your duty to apply the law exactly as I give it to you,
22 whether you agree with it or not. You must not be
23 influenced by any personal likes or dislikes, opinions,
24 prejudices or sympathy. That means that you must decide
25 this case solely on the evidence and according to the

1 law. You took an oath proposing to do so at the
2 beginning of a case.

3 You must follow all of my instructions and not
4 single out some and ignore others; they are all equally
5 important. You must not read into these instructions,
6 or into anything I may have said or done, any suggestion
7 as to what verdict you should return -- that is a matter
8 entirely for you to decide.

9 It is a cardinal principle of our system of
10 justice that every person accused of a crime is presumed
11 to be innocent unless and until his or her guilt is
12 established beyond a reasonable doubt. Presumption is
13 not a mere formality. It is a matter of the most
14 important substance.

15 The presumption of innocence alone is
16 sufficient to acquit a defendant unless you are
17 satisfied beyond a reasonable doubt of his or her guilt
18 after considering all of the evidence. The defendants
19 before you, Edward Brown and Elaine Brown, are entitled
20 to the benefit of that presumption and you are not to
21 convict any of them unless you are persuaded of that
22 defendant's guilt beyond a reasonable doubt.

23 In this case, the defendants are being charged
24 together because the government alleges that they both
25 participated together in certain conspiracies. But, in

1 considering the evidence and reaching your verdicts, you
2 will have to give separate consideration of the case
3 against each defendant. Don't think of the defendants
4 as a group. It is your duty to consider the charges
5 against each defendant separately and to return a
6 separate verdict for each defendant on each count. That
7 means, for each count you must decide whether the
8 government has presented evidence proving that
9 particular charge beyond a reasonable doubt.

10 In a criminal case, the burden is at all times
11 on the government to prove guilt beyond a reasonable
12 doubt. The law does not require that the government
13 prove guilt beyond all possible doubt. Proof beyond a
14 reasonable doubt is sufficient to convict. The burden
15 never shifts to the defendant. It's always the
16 government's burden to prove each of the elements of the
17 crimes charged beyond a reasonable doubt.

18 If, after a fair and impartial consideration
19 of all the evidence, you have a reasonable doubt as to
20 the guilt of any one of the defendants on any particular
21 offense, it is your duty to acquit him or her of that
22 offense. On the other hand, if after a fair and
23 impartial consideration of all of the evidence, you are
24 satisfied beyond a reasonable doubt of any of the
25 defendants' guilt on a particular offense, you should

1 vote to convict him or her of that offense.

2 A reasonable doubt does not mean a mere
3 possibility that the defendant may not be guilty; nor
4 does it mean a fanciful or imaginary doubt, nor one
5 based on groundless conjecture. It means a doubt based
6 upon reason.

7 Each of the defendants' guilt must be
8 established upon the evidence and the reasonable
9 inferences to be drawn from that evidence. The evidence
10 from which you are to decide what the facts are consists
11 of the sworn testimony of witnesses, both on direct and
12 cross-examination, regardless of who called the witness;
13 and the exhibits that have been received into evidence.

14 Although you may consider only the evidence
15 presented in the case, you are not limited in
16 considering that evidence to the bald statements made by
17 the witnesses or contained in the documents. In other
18 words, you are not limited solely to what you see and
19 hear as the witnesses testify. You are permitted to
20 draw from facts that you find to have been proven such
21 reasonable inferences as you believe are justified in
22 the light of common sense and personal experience.
23 That's something you do every day. There's nothing
24 magical about that.

25 There are two kinds of evidence: direct and

1 circumstantial. Direct evidence is direct proof of a
2 fact, such as the testimony of an eyewitness.
3 Circumstantial evidence is indirect evidence, that is,
4 proof of a fact or chain of facts from which you could
5 draw the inference, by reason and common sense, that
6 another fact exists, even though that other fact hasn't
7 been proven directly. You remember I gave you just a
8 silly example of that. You're entitled to consider both
9 kinds of evidence. The law permits you to give equal
10 weight to both, but it is for you the jury to decide how
11 much weight to give to any evidence.

12 Now, during the course of this trial you heard
13 testimony from persons who claim special expertise in
14 certain areas.

15 People who, by education and experience, have
16 become expert in some field or developed a special
17 expertise may state their opinions on matters in that
18 field and may also state their reasons for the opinions.

19 Expert opinion testimony should be judged like
20 any other testimony. You may accept it or reject it or
21 give it as much weight as you think it deserves
22 considering the witness's education and experience, the
23 reasons given for the opinion, and all the other
24 evidence in the case.

25 Now, defendant Elaine Brown has a

1 constitutional right not to testify, and no inference of
2 guilt, or of anything else, may be drawn from the fact
3 that she did not testify. For any of you to draw such
4 an inference would be wrong; and indeed, it would be a
5 violation of your oath as a juror.

6 Now, whether the government has sustained its
7 burden of proof does not depend on the number of
8 witnesses it has called or the number of exhibits it has
9 offered, but instead upon the nature and quality of the
10 evidence presented. You do not have to accept the
11 testimony of any witness if you find the witness is not
12 credible. Not believable. You must decide which
13 witnesses to believe and which facts are true. To do
14 this, you must look at all of the evidence, drawing upon
15 your common sense and personal experience.

16 In deciding what to believe, you may consider
17 a number of factors, including the following: The
18 witness's ability to see or hear or know the things to
19 which the witness testifies. The quality of the
20 witness's memory. The witness's manner while
21 testifying. Whether the witness has an interest in the
22 outcome of the case or any motive, bias or prejudice.
23 Whether the witness is contradicted by anything the
24 witness said or wrote before trial or by other evidence.
25 And how reasonable the witness's testimony is when

1 considered in light of other evidence which you believe
2 to be true.

3 Again, you do that every day when you decide
4 who to believe and who not to believe.

5 Now, the evidence in this case includes facts
6 to which the lawyers have agreed or stipulated. You
7 remember a stipulation was read to you at some point
8 during the trial. A stipulation means simply that the
9 government and the defendants accept the truth of a
10 particular fact. Since there's no disagreement, there
11 is no need for evidence apart from the stipulation. You
12 must accept the stipulation as fact to be given whatever
13 weight you choose.

14 Now, what is not evidence. Certain things are
15 not evidence and you may not consider them in deciding
16 what the facts are. I will list them for you.

17 Arguments and statements by lawyers are not
18 evidence. The lawyers are not witnesses. What they say
19 in their opening statements, closing arguments, and at
20 other times is intended to help you interpret the
21 evidence, but as I told you at the beginning, it's not
22 evidence. If the facts as you remember them differ from
23 the way the lawyers state them, it's your memory of the
24 facts that controls.

25 Questions and objections by lawyers are not

1 evidence. Lawyers have a duty to their clients to
2 object when they believe a question or an exhibit is
3 improper under the rules of evidence. You should not be
4 influenced by the objection or by my ruling on it.

5 Anything that I've excluded from evidence, and
6 that's happened occasionally during the trial, and
7 instructed you to disregard as not evidence, you must
8 not consider such items.

9 Anything you may have seen or heard when the
10 court was not in session is not evidence. You are to
11 decide this case solely on the evidence received at
12 trial.

13 The indictment is not evidence. This case,
14 like most criminal cases, began with an indictment. The
15 indictment in this case was brought against these
16 defendants and has multiple counts. You remember counts
17 means charges. You will have the indictment before you
18 in the jury room during the course of your
19 deliberations. This indictment will contain the counts
20 on which you will deliberate. I caution you, as I have
21 before, that the fact that a defendant has had an
22 indictment filed against him or her is no evidence
23 whatsoever of his or her guilt. The indictment is
24 simply an accusation. It is the means by which the
25 allegations and the charges of the government are

1 brought before this court. The indictment by itself
2 proves nothing.

3 Now, as part of the evidence in this case you
4 may have heard alleged statements by the defendants that
5 were recorded or other video recordings. This is proper
6 evidence for you to consider. You will have the ability
7 in the jury room to listen to recordings received into
8 evidence. You will be provided a laptop in the jury
9 room so you can listen to the recordings and view videos
10 that were received into evidence. You should not use
11 this laptop for any other purpose.

12 Now, during the presentation of evidence, you
13 have seen what is alleged to be firearms, ammunition and
14 other items identified as destructive devices. Some of
15 these items have been admitted into evidence as
16 exhibits. Unlike other exhibits, these alleged
17 firearms, ammunitions and the items identified as
18 destructive devices will not be present with you in the
19 jury room when you go to deliberate. You will, however,
20 be allowed to examine them if you wish to do so. If you
21 would like to examine any of these exhibits during your
22 deliberations, please communicate that wish to me by
23 giving a note to the jury officer, which he will give to
24 me. A court security officer will then bring the
25 exhibits you request into the jury room, and you will be

1 allowed to examine them there in his presence. Now, do
2 not deliberate in the jury room while he is present.
3 Look at whatever exhibits you wish to do and wait till
4 he leaves with the exhibits before you begin to
5 deliberate. You're supposed to deliberate without
6 anyone else being in the jury room, so therefore don't
7 discuss the case or deliberate while anyone is there
8 bringing you an exhibit. Wait until the officer leaves
9 with the exhibit.

10 I now come to the second part of my
11 instructions, the elements of the offenses the
12 government has charged and what it must prove to make
13 its case.

14 In general, the indictment charges that the
15 offenses were committed on or about certain dates. It
16 is sufficient if the government proves beyond a
17 reasonable doubt that the offense was committed on dates
18 reasonably near the dates charged.

19 Count I, charge one, conspiracy to prevent
20 officers of the United States from discharging their
21 duties.

22 The defendants are charged in Count I with
23 conspiring with each other and other co-conspirators to
24 prevent by force, intimidation or threat officers of the
25 United States from arresting Edward and Elaine Brown.

1 It is against the law to conspire with someone to commit
2 this crime. To prove that any of the defendants
3 conspired to commit this crime, the government must
4 prove the following beyond a reasonable doubt:

5 First, that the agreement specified in the
6 indictment, and not some other agreement, existed
7 between at least two people.

8 Second, that the defendant willfully joined
9 that agreement.

10 Third, that the defendant acted with intent to
11 prevent employees of the United States Marshal Service
12 in the discharge of their official duties.

13 Fourth, one of the conspirators committed an
14 overt act alleged in the indictment during the period of
15 the conspiracy in an effort to further the purpose of
16 the conspiracy.

17 And fifth, that the employees of the United
18 States Marshal Service are officers of the United
19 States.

20 I will instruct you further about the law of
21 conspiracy after I describe Count II.

22 Count II, conspiracy to commit offenses
23 against the United States.

24 In Count II the defendants are charged with
25 conspiring with each other and other co-conspirators to

1 commit a federal crime -- specifically, to assault,
2 resist, or impede officers of the United States in the
3 discharge of their duties to arrest Edward and Elaine
4 Brown. It is against federal law to conspire with
5 someone to commit this crime. For you to find that
6 either of the defendants are guilty of this conspiracy,
7 you must be convinced that the government has proven
8 each of the following things beyond a reasonable doubt:

9 First, that the agreement specified in the
10 indictment, and not some other agreement or agreements,
11 existed between at least two people to assault, resist,
12 or impede officers of the United States in the discharge
13 of their duties to arrest Edward and Elaine Brown.

14 Second, that the defendant willfully joined in
15 that agreement.

16 Third, that the defendant acted with intent to
17 further its unlawful purpose.

18 And fourth, that one of the conspirators
19 committed an overt act alleged in the indictment during
20 the period of the conspiracy in an effort to further the
21 purpose of the conspiracy.

22 A conspiracy is an agreement, spoken or
23 unspoken. The conspiracy does not have to be a formal
24 agreement or plan in which everyone involved sat down
25 together and worked out all the details.

1 The government must prove beyond a reasonable
2 doubt that those who were involved shared a general
3 understanding about the crime. Mere similarity of
4 conduct among various people, or the fact that they may
5 have associated with each other or discussed common aims
6 and interests does not necessarily establish proof of
7 the existence of a conspiracy, but you may consider such
8 factors.

9 To act willfully means to act voluntarily and
10 intelligently and with the specific intent that the
11 underlying crime be committed -- that is to say, with
12 bad purpose, either to disobey or disregard the law --
13 and not to act by ignorance, accident or mistake. The
14 government must prove two kinds of intent beyond a
15 reasonable doubt before a defendant can be said to have
16 willfully joined a conspiracy. First, an intent to
17 agree. Second, an intent, whether reasonable or not,
18 that the underlying crime be committed. Mere presence
19 at the scene of a crime is not alone enough, but you may
20 consider it among other factors. Intent may be inferred
21 from the surrounding circumstances.

22 Proof that any defendant willfully joined in
23 the agreement must be based upon evidence of his or her
24 own words and/or actions. You need not find that any
25 defendant agreed specifically to or knew about all the

1 details of the crime, or knew every other co-conspirator
2 or that he or she participated in each act of the
3 agreement or played a major role, but the government
4 must prove beyond a reasonable doubt that the defendant
5 knew the essential features and the general aims of the
6 venture. Even if a defendant was not part of the
7 agreement at the very start, he or she can be found
8 guilty of conspiracy if the government proves that he or
9 she later joined the agreement later. On the other
10 hand, a person who has no knowledge of a conspiracy, but
11 simply acts in a way that furthers some object or
12 purpose of the conspiracy, does not thereby become a
13 conspirator.

14 Count III and IV, carrying, using or
15 possessing a firearm, including a destructive device, in
16 connection with a crime of violence.

17 The defendants are charged in Counts III and
18 IV with carrying, using or possessing a firearm,
19 including a destructive device, in connection with a
20 crime of violence. Count III charges defendant Edward
21 Brown. Count IV charges defendant Elaine Brown with
22 that crime. In order to prove that either of the
23 defendants carried, used or possessed a firearm in
24 connection with a crime of violence, the government must
25 prove the following beyond a reasonable doubt:

1 First, that the defendant conspired to prevent
2 officers of the United States from discharging their
3 duties as charged in Count I, or conspired to interfere
4 with federal law enforcement officers in the discharge
5 of their duties as charged in Count II of the
6 indictment.

7 Second, defendant knowingly carried or used a
8 firearm including a destructive device during and in
9 relation to, or possessed a firearm including a
10 destructive device in furtherance of, the commission of
11 that crime of violence.

12 The word knowingly as that term has been used
13 in these instructions, means that the act was done
14 voluntarily and intentionally and not because of mistake
15 or accident.

16 The term firearm means any weapon which will
17 or is designed to or may be readily converted to expel a
18 projectile by the action of an explosive.

19 A destructive device, the term destructive
20 device, means any explosive, incendiary bomb, grenade,
21 bomb or similar device, or any type of weapon by
22 whatever name known which will, or which may be readily
23 converted to, expel a projectile by the action of an
24 explosive or other propellant, and which has any barrel
25 with a bore of more than one-half inch in diameter.

1 Destructive device also includes any combination of
2 parts either designed or intended from which a
3 destructive device may be assembled.

4 Possess means to exercise authority, dominion
5 or control over something. The law recognizes different
6 kinds of possession. Possession includes actual and
7 constructive possession. A person who has direct
8 physical control of something on or about his or her
9 person is in actual possession of it. A person who is
10 not in actual possession, but who has both the power and
11 the intention to exercise control over something is in
12 constructive possession. Whenever I've used the term
13 possession in these instructions, I mean actual as well
14 as constructive possession. Possession also includes
15 sole possession or joint possession. If one person
16 alone has actual or constructive possession, possession
17 is sole. If two or more people share actual or
18 constructive possession, possession is joint. Whenever
19 I've used the word possession in these instructions, I
20 mean joint as well as sole possession.

21 The term in furtherance as I've used it mean
22 to help, further, promote, or advance the crime.

23 There is another method by which you may
24 evaluate whether to find any of the defendants guilty of
25 carrying, using or possessing a firearm in connection

1 with a crime of violence. If, in light of my
2 instructions, you find a reasonable doubt that a
3 defendant was guilty on the conspiracy charged in Count
4 I or II, then you may also, but you are not required to,
5 find that defendant guilty of carrying, using or
6 possessing a firearm in connection with a crime of
7 violence, provided you find beyond a reasonable doubt
8 each of the following elements:

9 First, that someone else committed the crime
10 of carrying, using or possessing a firearm in connection
11 with a crime of violence.

12 Second, that the person you find actually
13 committed the substantive crime of carrying, using or
14 possessing a firearm in connection with a crime of
15 violence was a member of the conspiracy of which you
16 found defendant was a member.

17 Third, that this co-conspirator committed the
18 substantive crime in furtherance of the conspiracy.

19 Fourth, that this defendant was a member of
20 the conspiracy at the time the substantive crime was
21 committed and had not withdrawn from it.

22 And fifth, the defendant could reasonably have
23 foreseen that one or more of his or her co-conspirators
24 might commit the substantive crime. If you find all
25 five of these elements exist beyond a reasonable doubt,

1 you may find the defendant guilty of the substantive
2 crime charged even though he or she did not personally
3 participate in the acts constituting the crime or did
4 not have personal knowledge of them. If, however,
5 you're not satisfied as to the existence of any one of
6 these five elements, then you may not find that
7 defendant guilty of that particular substantive crime
8 unless the government proves beyond a reasonable doubt
9 that the defendant personally committed that substantive
10 crime.

11 Counts V and VI: Felon in possession.

12 The defendants are charged with a violation of
13 federal law which makes it a crime for a person
14 convicted of a felony to possess a firearm. Edward
15 Brown is charged in Count V with possession of a firearm
16 after having been convicted of a crime punishable by
17 imprisonment for more than a year. Elaine Brown is
18 charged in Count VI with possessing a firearm after
19 having been convicted of a crime punishable by
20 imprisonment for more than a year. In order to prove
21 either of the defendants guilty of this crime, the
22 government must prove the following beyond a reasonable
23 doubt:

24 First, that that defendant was previously
25 convicted in any court of at least one crime punishable

1 by imprisonment for a term exceeding one year.

2 Second, that the defendant knowingly possessed
3 the firearm described in the indictment.

4 And third, that the firearm was in or affected
5 interstate commerce.

6 Count VII and VIII: Obstruction of justice.

7 The defendants are charged with violation of
8 federal law, which makes it a crime to obstruct justice.
9 Edward Brown is charged with obstruction of justice in
10 Count VII. Elaine Brown is charged with obstruction of
11 justice in Count VIII. In order to prove this charge,
12 the government must prove the following beyond a
13 reasonable doubt:

14 First, that there were trial and sentencing
15 proceedings pending before a federal court against the
16 defendants Edward and Elaine Brown for violation of tax
17 laws and other financial crimes.

18 Second, the defendant knew of the pending
19 proceeding.

20 Third, the defendant threatened physical force
21 against the United States Marshals as charged in the
22 indictment.

23 And fourth, that the defendant's conduct
24 influenced, obstructed, or impeded, or endeavored to
25 influence, or obstruct, or to impede the due

1 administration of justice in that proceeding. It is not
2 necessary to show that the defendant was successful in
3 achieving this forbidden objective, only that the
4 defendant corruptly tried to achieve it in a manner
5 which he or she knew was likely to influence, obstruct,
6 or impede the due administration of justice as to the
7 natural and probable effect of the defendant's actions.

8 Count IX: Failure to appear for trial.

9 Edward Brown is charged with violation of
10 federal law which makes it a crime for anyone who has
11 been released on bail in this court to thereafter
12 willingly fail to appear when required to do so. In
13 Count IX Edward Brown is charged with willfully failing
14 to appear at his trial on tax charges in January 2007.

15 In order to prove this charge, the government
16 must prove the following beyond a reasonable doubt:

17 First, that the defendant had been released on
18 bail pursuant to an order of a judge or a magistrate
19 judge of this court on condition that the defendant
20 appear in court for trial.

21 Second, that the defendant thereafter
22 willfully failed to appear at trial as required on
23 January 12, 2007 and continuing through January 18,
24 2007.

25 And third, that the offense charged in the

1 case in which the defendant had been released on bail
2 was punishable by a term of imprisonment of five years
3 or more.

4 Counts XI and X: Failure to appear for
5 sentencing.

6 Defendants are charged with violation of
7 federal law which makes it a federal crime for anyone
8 who has been released on bail in this court to
9 thereafter willfully fail to appear when required to do
10 so for sentencing. In Count X Edward Brown is charged
11 with willfully failing to appear at his sentencing
12 hearing on April 24, 2007, in connection with his
13 conviction on tax charges. In Count XI Elaine Brown is
14 charged with willfully failing to appear at her
15 sentencing hearing on April 24, 2007, in connection with
16 her conviction on tax charges.

17 In order to prove this charge, the government
18 must prove the following beyond a reasonable doubt:

19 First, that the defendant had been released on
20 bail pursuant to an order of a judge or magistrate judge
21 of this court on condition that the defendant appear in
22 court for sentencing as required on April 24, 2007.

23 Second, that the defendant thereafter
24 willfully failed to appear for sentencing.

25 And third, that the offense charged in the

1 case in which the defendant had been released on bail
2 was punishable by a term of imprisonment of five years
3 or more.

4 Remember, the defendants deny committing the
5 offenses I've just described and both defendants have
6 pled not guilty to the charges made against them.

7 I now come to the last part of my
8 instructions, the rules for your deliberations.

9 When you retire to the jury room, you will
10 discuss this case with the other jurors. You shall
11 permit your foreperson, Juror No. 1 here, to preside
12 over your deliberations, and your foreperson, Juror No.
13 1, will speak for you here in court. Your verdict must
14 be unanimous.

15 Your verdict must be based solely on the
16 evidence and on the law as I have given it to you in
17 these instructions. However, remember that nothing that
18 I have said or done is intended to suggest what your
19 verdict should be -- that's entirely for you to decide.

20 Each of you must decide the case for yourself,
21 but you should do so only after considering all of the
22 evidence, discussing it fully with the other jurors, and
23 listening to the views of the other jurors.

24 Don't be afraid to change your opinion if you
25 think you are wrong. But don't come to a decision

1 simply because other jurors think it is right.

2 This case has taken considerable time and
3 effort to prepare and try. There is no reason to think
4 that it could be better tried or that another jury is
5 better qualified to decide it. It is important
6 therefore that you reach a verdict if you can do so
7 conscientiously. If it looks at some point as if you
8 may have difficulty in reaching a unanimous verdict, and
9 if the greater number of you are agreed on a verdict,
10 the jurors in both the majority and the minority should
11 re-examine their positions to see whether they've given
12 careful consideration and sufficient weight to the
13 evidence that has favorably impressed the jurors who
14 disagree with them. You should not hesitate to
15 reconsider your views from time to time and to change
16 them if you're persuaded that this is appropriate.

17 It is important that you attempt to reach a
18 verdict, but of course, only if each of you can do so
19 after having made your own conscientious determination.
20 Do not surrender an honest conviction about the evidence
21 simply to reach a verdict.

22 Now, to assist you in your deliberation on
23 these issues and to help you in reporting your decisions
24 I am providing to you two verdict forms. One for each
25 defendant. As to these instructions, nothing in the

1 form is intended to suggest what result you should
2 reach. Would you pass those out for me.

3 THE CLERK: Thank you, your Honor.

4 THE COURT: There should be two attached by a
5 paper clip. Does everyone have one? Back row? Yes,
6 okay, we're going to start with United States of America
7 versus Edward Brown. Everyone put that in front of
8 them. The top is the name of the case. And it
9 indicates jury verdict form. Starts with Count I. You
10 remember I've gone through each of the counts with you.
11 It separates them out. When and if you reach a
12 unanimous verdict you will see there's a spot, we the
13 jury find the defendant, Edward Brown, the foreperson
14 who will write either not guilty or guilty in that
15 space.

16 And then when you finish Count I you proceed
17 to question two. You see the instruction right under
18 Count I. I know you see it but I have to tell you
19 anyway.

20 Then the second one, we the jury find the
21 defendant, Edward Brown, not guilty or guilty of
22 conspiracy to hinder or prevent the United States
23 Marshals in attempting to arrest Edward and Elaine
24 Brown.

25 Now, you see some instructions at the bottom

1 of the page. If you have answered either question one
2 guilty or question two guilty, go to question three. If
3 you have answered both question one and question two not
4 guilty, skip questions three and four and go to question
5 five, and that's because question three and four only
6 apply if you found the defendant guilty of either one
7 and two. Everyone understand? Okay.

8 So if you found guilty on one and two or one
9 or two, you will go to question three. We the jury find
10 the defendant, Edward Brown, not guilty, guilty, of
11 carrying, using or possessing a firearm in connection
12 with the crime of violence charged in Count I or II.

13 Now, if you answer that guilty, you'll go to
14 question four. If you say not guilty, you'll skip
15 question four. Question four has to do with whether the
16 firearm is a destructive device. All destructive
17 devices are firearms, but not all firearms are
18 destructive devices. So therefore unless you find the
19 defendant guilty of Count III, you can't go on to Count
20 IV because there's no underlying firearm. Everyone
21 understand? Okay.

22 Then you go to question five. We the jury
23 find the defendant, Edward Brown, this is the felon in
24 possession, not guilty, guilty, of possessing a firearm
25 after having been convicted of a crime punishable by

1 imprisonment for more than one year. And you see the
2 instruction.

3 Go to question six. We the jury find the
4 defendant, Edward Brown, not guilty, guilty, of
5 obstructing justice.

6 Then question seven. We the jury find the
7 defendant, Edward Brown, not guilty, guilty, of failing
8 to appear at trial.

9 Proceed to question eight. We the jury find
10 the defendant, Edward Brown, not guilty, guilty, of
11 failing to appear at sentencing.

12 When you're done, the foreperson will date the
13 verdict form as you see it on the last page and sign it.

14 Then let's go over to Elaine Brown, and you
15 can do this in either order. I'm just starting with one
16 and not the other.

17 Count I, again, conspiracy to prevent by
18 force, intimidation or threat, officers of the United
19 States from arresting Edward and Elaine Brown not
20 guilty, guilty.

21 Proceed to question two. The jury finds not
22 guilty or guilty of Elaine Brown of conspiracy to hinder
23 or prevent the United States Marshals in attempting to
24 arrest Edward and Elaine Brown. Again, if you have
25 found guilt as to one and two, go to question three. If

1 you found not guilty to both, skip three and four and go
2 to five just as I have told you before.

3 Question three, we the jury find, Elaine
4 Brown, not guilty or guilty of carrying or using a
5 firearm in connection with the crime of violence charged
6 in Count I and II. If you find not guilty on that, in
7 other words, there was no firearm, you skip the
8 destructive device. If you find firearm, then you have
9 to decide whether that's a destructive device. There
10 may be firearms that aren't destructive devices, there
11 may be firearms that are not destructive devices. You
12 may find one or more firearms, you may find no firearms.
13 One of those in order for you to say guilty on Count IV
14 has to be a destructive device as defined in the
15 instructions.

16 Question five has to do with possessing a
17 firearm by a felon.

18 Then you go to question six, whether Elaine
19 Brown is guilty or not guilty of obstructing justice.

20 And then question seven, we the jury find
21 Elaine Brown not guilty or guilty of failing to appear
22 at sentencing.

23 Sign and date. Then give a written note to
24 the jury officer outside your door, a note indicating
25 the jury has finished its deliberations and have

1 verdicts. Do not give these verdict forms to the jury
2 officer. Keep them. I will take those verdict forms
3 from you at court. Just give a note to the jury officer
4 saying you've reached a verdict and you're ready to
5 return to the courtroom. After you return to the
6 courtroom your foreperson will deliver the completed
7 verdict forms as directed by me in open court.

8 Everyone understand what I'm saying? Okay.

9 If it becomes necessary during your
10 deliberations to communicate with me, you may send a
11 note through the jury officer signed by your foreperson
12 or by one or more members of the jury. No member of the
13 jury should ever attempt to communicate with me on
14 anything concerning this case except by a signed
15 writing. And I will communicate with any member of the
16 jury on anything concerning this case in writing, or I
17 may bring you back here in open court if it will take a
18 little longer than something in writing. If you send
19 out a question, I will consult with the parties as
20 promptly as possible before answering it. That may take
21 some time. You may continue with your deliberations
22 while waiting for the answer to any question. Remember,
23 you're not to tell anyone, including me, how the jury
24 stands, numerically or otherwise, until after you've
25 reached a unanimous verdict or have been discharged.

1 In conclusion, ladies and gentlemen, if the
2 government has established the guilt of a defendant
3 under the law beyond a reasonable doubt, you should find
4 the defendant guilty. If, on the other hand, the
5 government has not in your view established the guilt of
6 a defendant beyond a reasonable doubt, you should find
7 the defendant not guilty on that particular charge.

8 Now I'm going to confer briefly with counsel
9 over here at sidebar. I may have some additional
10 remarks to make to you, and then I will submit this case
11 to you for deliberation.

12 AT SIDEBAR

13 THE COURT: Counsel for the government,
14 objections?

15 MR. HUFTALEN: I noticed something that I
16 didn't notice earlier and that is on the verdict forms
17 for each with respect to Counts I and II, they're
18 written in the conjunctive with respect to Edward and
19 Elaine.

20 THE COURT: All right, what does the
21 indictment say?

22 MR. HUFTALEN: I believe the indictment says
23 Edward and Elaine. I believe it says Edward and Elaine.

24 THE COURT: Then the verdict reads the same as
25 the indictment?

1 MR. HUFTALEN: You're right, I'm sorry, the
2 instruction is in the disjunctive, okay.

3 THE COURT: Anything else?

4 MR. HUFTALEN: Yeah, the redacted indictment
5 we have, or the indictment that's going to go in has
6 been redacted substantially and it looks peculiar with
7 all of the gray redacts on it.

8 THE COURT: You want me to tell them to
9 disregard the gray? Counsel agree?

10 MR. IACOPINO: I join in that.

11 MR. LANGE: I agree.

12 MR. HUFTALEN: Lastly there's a forfeiture
13 provision at the end of the indictment. We do not
14 intend to --

15 THE COURT: Is that included in this form?

16 MR. HUFTALEN: It is on the last page. We
17 intend to pursue that civilly later, not through this.

18 THE COURT: Okay.

19 MR. IACOPINO: Has it been redacted out of the
20 indictment?

21 MR. HUFTALEN: No, it hasn't.

22 THE COURT: You want that redacted?

23 MR. IACOPINO: Yeah, please.

24 MR. HUFTALEN: We just take page 24 of 25 out.

25 THE COURT: Okay, the last page, just rip it

1 off.

2 MR. HUFTALEN: We can take the signature page
3 off as well and just take the last two?

4 THE COURT: I don't think so. Why don't you
5 remove page 24 and leave the last page. Everyone agree?

6 MR. LANGE: I agree.

7 THE COURT: No one disagrees. That one, okay.
8 Next?

9 MR. HUFTALEN: Nothing further.

10 THE COURT: Mr. Lange?

11 MR. LANGE: Your Honor, I renew the points
12 that I made during the charge conference earlier this
13 afternoon. I urge the court to give a justification
14 instruction. You already have my argument. Do you want
15 me to make it again? I don't have anything to add to
16 what I argued before.

17 THE COURT: Request is denied.

18 MR. LANGE: With regard to the lesser included
19 offense I realize now that the deliberation form
20 incorporates many of my concerns, but I do want to
21 preserve for appellate purposes the court's decision not
22 to grant the proposed lesser included instruction I
23 submitted last night.

24 THE COURT: I think it's covered.

25 MR. LANGE: I misspoke with regard to my third

1 objection. I urge the court to modify the next to last
2 paragraph on page 25 summarizing the burden of proof.
3 What I would urge the court to do is say in conclusion,
4 ladies and gentlemen, if the government established the
5 guilt of the defendant under the law beyond a reasonable
6 doubt, you may find the defendant guilty. In other
7 words, I would ask that the "should" be replaced with
8 "may."

9 THE COURT: That's denied. What else?

10 MR. LANGE: There's going to be further
11 explanation --

12 THE COURT: Go ahead.

13 MR. LANGE: My argument is that although
14 federal law doesn't at this point permit jury
15 nullification, there is, it appears, a tendency in the
16 Supreme Court particularly to give greater power to
17 jurors in deciding guilt or innocence in cases and I
18 think that the proposed jury instruction would be a
19 reasonable and constitutionally supportive step in the
20 direction of empowering jurors.

21 THE COURT: Anything else?

22 MR. LANGE: I join in Attorney Iacopino's
23 argument with respect to reasonable doubt in the Allen
24 charge.

25 THE COURT: Mr. Iacopino.

1 MR. IACOPINO: Thank you, your Honor. Your
2 Honor, we too would object to the lack of a
3 justification instruction as we discussed in chambers.
4 As we indicated to you in chambers, we believe the
5 defendant's testimony alone was enough evidence to
6 warrant the theory of the defense instruction and that
7 it was up to the jury to determine whether or not his
8 beliefs were reasonable, objectively or not.

9 Secondly, your Honor, I object as I did during
10 the charging conference to the beyond a reasonable doubt
11 instruction. I think that the way the instruction was
12 given, and I understand that it's a pattern instruction,
13 but the way that it's given I think it shifts an
14 advantage to the government in terms of the ability of
15 the jury to understand the term reasonable doubt.

16 Third, I object to your portion of the charge
17 which is essentially from the Allen case because there
18 is no indication at this point in time that any of the
19 jurors have any -- there's any sort of stalemate or
20 inability to reach a verdict.

21 I join in all of the objections made by Mrs.
22 Brown's counsel. I, too, would ask you to amend the
23 conclusionary paragraph on page 25. I would ask you to
24 amend it, from our view, this is not the same objection
25 Mr. Lange made, but I think the last sentence should

1 read that, if on the other hand the government has not
2 in your view established the guilt of the defendant
3 beyond a reasonable doubt, you have and you should find
4 the defendant not guilty. I believe that should be "you
5 must find the defendant not guilty."

6 MR. LANGE: I concur with that last argument.

7 THE COURT: Your requests are denied. Your
8 objections are overruled.

9 Any issues with regard to the verdict form?

10 MR. HUFTALEN: No.

11 MR. IACOPINO: Not from us, judge.

12 THE COURT: Mr. Lange.

13 MR. LANGE: Not from me, your Honor.

14 THE COURT: All right, I'm going to at this
15 point excuse -- before I forget, I'm going to mention
16 the indictment and the redactions, and I'm going to
17 excuse the alternate. I'm going to tell the alternate
18 to not read anything about this case, discuss the case,
19 keep sterile so to speak, leave a phone number so that
20 we can reach the alternate in case one of the jurors
21 gets ill or whatever during the course of deliberations.
22 Does anyone object?

23 MR. HUFTALEN: I do not object.

24 MR. LANGE: No.

25 MR. IACOPINO: No objection, your Honor.

1 THE COURT: Now, what I'm going to do is, so
2 we're clear, is I'm going to excuse the alternate right
3 now before the other jurors leave before I commit this
4 case so that someone needs to get a phone number, I'm
5 going to instruct the alternate to give a phone number
6 so that we can either get the alternate back or tell
7 them we have a verdict.

8 THE CLERK: Do I have a moment to do that?

9 THE COURT: You absolutely can do that. I'm
10 going to wait because I don't want him in the jury room
11 anyway, so you go with him, and I'll wait for you to
12 come back before I do a commitment order, all right?

13 THE CLERK: Okay. If I call somebody up, can
14 they come take him down?

15 THE COURT: I'll wait for you to do that.

16 THE CLERK: Okay.

17 THE COURT: I'll just sit and wait until you
18 do that right now. Give me a high sign. You ready?
19 Let's collect the verdict forms.

20 BEFORE THE JURY

21 THE CLERK: Jurors, if you could pass the
22 verdict forms down and we will collect those.

23 THE COURT: We're sending one with you to the
24 jury room. You're not going to be without them.

25 THE CLERK: I have them all, your Honor.

1 THE COURT: Very good. Now, I have no
2 additional instructions for you. I do want to mention
3 to you when you get the indictment that we talked about,
4 some parts have been grayed out or gone. Don't concern
5 yourselves with why or what's underneath it or you can't
6 see underneath it anyway because it's nothing, don't
7 worry about it, it's nothing to do with your
8 deliberations. Just disregard the parts that are gone.

9 All right, now at this time we started with
10 three alternates and we've now discovered why we have
11 alternate jurors. Alternate jurors are very important
12 and this case is an example. If we didn't have
13 alternates we wouldn't be able to finish. We still have
14 one alternate juror. I'm going to dismiss that
15 alternate at this time conditionally.

16 I'm going to instruct the alternate, even
17 though they're not going to be deliberating with the
18 jury, not to read anything about this case, discuss the
19 case, not to do anything I've forbidden you to do up to
20 now because it's possible that if a juror gets ill or
21 whatever during the course of the deliberations, I may
22 call that alternate back and that alternate will become
23 a juror, and then the jury will start deliberating
24 again. That's to prevent us not having enough jurors
25 during the course of deliberations.

1 The alternate juror in this case is Juror No.
2 8 at the end of the front row here. Now Juror No. 8, I
3 want to emphasize, when you leave here you're going to
4 leave a phone number with the clerk so that the clerk
5 can call you and say come on down, all right, and you
6 may be called upon to come and begin deliberation with
7 the remaining members of this jury. Don't discuss this
8 case with anyone. Don't let anyone discuss it with you.
9 You're to do everything just as you were during the
10 course of this trial to remain just the way you were.
11 Don't consider this case. Don't think about it. Don't
12 discuss it. Don't do anything that may affect what
13 you've heard in this courtroom. Don't get any
14 additional views. And then leave a phone number. We
15 will call you, either A, if we need you to come down and
16 deliberate, or B, we will let you know the case is over
17 and you can then talk to whoever you wish. All right?
18 You're excused right now. I'm going to let you leave
19 now. The rest of the jury stay here because he can't be
20 in the room while you're deliberating. I'm just going
21 to wait a moment.

22 (Alternate juror leaving courtroom.)

23 THE CLERK: Thank you, your Honor.

24 THE COURT: I hereby order that this jury be,
25 and it is hereby, committed to the care, custody, and

1 safekeeping of the United States Marshal for the
2 District of New Hampshire, and its duly authorized
3 deputy marshals, and the duly sworn jury officers of
4 this court for the period of their deliberation in this
5 matter now before the court. I further order that said
6 officers shall attend diligently upon the jury; shall
7 see that no one communicates with them, nor they with
8 others, except upon, and in accordance with, an order of
9 this court; and that their needs be speedily attended to
10 for such period of time as they may require.

11 Ladies and gentlemen of the jury, I commit
12 this case to you for deliberation and decision. I
13 commend you to your verdict. You may retire. The jury
14 is excused. We will be sending the exhibits into you as
15 soon as they are compiled.

16 (Jury excused to deliberation room.)

17 THE COURT: Anything else for the government?

18 MR. HUFTALEN: No, thank you.

19 THE COURT: Mr. Lange, anything else?

20 MR. LANGE: I have an exhibit to substitute.

21 I think we can do that by agreement.

22 THE COURT: Substitute?

23 MR. LANGE: It's the concert without the
24 sound.

25 MR. HUFTALEN: No objection.

1 THE COURT: What is the new --

2 MR. LANGE: It's two delta dash one.

3 THE CLERK: It's already been admitted, your
4 Honor.

5 THE COURT: So this will be two delta dash one
6 A.

7 MR. LANGE: It's the same.

8 THE COURT: It's exactly the same? Then it's
9 already in. All right, anything else, Mr. Lange?

10 MR. LANGE: No.

11 THE COURT: Mr. Iacopino?

12 MR. IACOPINO: Nothing, your Honor.

13 THE COURT: All right, we're in recess. Leave
14 your phone numbers with the clerk.

15 (Recess at 4:20 p.m. while jury deliberates.)

16 (7:00 p.m. in chambers.)

17 THE COURT: We received a note from the jury.

18 Counsel is present in chambers. It indicates as
19 follows. Quote, can we obtain an index of the items
20 admitted as evidence to aid in a search for specific
21 items of evidence for review.

22 That's the extent of the note. I propose to
23 answer as follows: In response to your note I will have
24 the exhibit list sent to you as soon as the lists are
25 prepared.

1 Anyone object to that?

2 MR. LANGE: No, your Honor.

3 MR. HUFTALEN: No.

4 MR. IACOPINO: No, sir.

5 THE COURT: I propose at 7:30 to bring them
6 into court. I'll instruct them to not think about the
7 case overnight and to not begin deliberating until all
8 the jurors are present in the jury room.

9 MR. IACOPINO: What time are you going to
10 start them tomorrow?

11 THE COURT: 8:30. Any objection to that?

12 MR. LANGE: No.

13 (7:40 p.m. in chambers.)

14 THE COURT: I got another note from the jury.
15 It says can we get additional copies of the judge's
16 final jury instructions, 11 copies. I propose to
17 indicate to them, I'm going to bring them in the
18 courtroom because I'm going to wish them goodnight
19 anyway and give them the instructions I indicated
20 earlier. They will have 11 additional copies available
21 for them when they come in tomorrow morning at 8:30.
22 Anyone object?

23 MR. HUFTALEN: No.

24 MR. LANGE: No.

25 MR. IACOPINO: No, your Honor.

1 THE COURT: Okay, we'll go in the courtroom
2 as soon as the jury is ready and we will wish them a
3 good evening.

4 MR. IACOPINO: Thank you, sir.

5 BEFORE THE JURY

6 THE COURT: Members of the jury, in response
7 to your recent note we will have 11 copies available for
8 you when you come in in the morning.

9 We're going to finish your deliberations for
10 this evening. I only called you in just to give you a
11 couple of reminders.

12 Now that you're in deliberations, obviously
13 once you leave here you're not going to talk to anybody
14 about the case. You're not going to let anyone talk to
15 you about the case. You're not going to do any
16 independent investigation or reading about this case in
17 the news or otherwise. Stop thinking about this case to
18 the extent you can. In fact, you have a little break
19 overnight, and when you come back tomorrow do not begin
20 deliberating, don't start discussing this case until all
21 of the jurors are present. It's important and it's
22 required that the jury deliberate all together. That
23 means all of you. So if one person comes in late or
24 whatever, I don't know, it's not my business how you get
25 here, but if one of you is late, don't start until

1 you're all together, all right?

2 With that I wish you a very pleasant evening.

3 Thank you for your hard work today. The jury is
4 excused.

5 (Jury is excused from the courtroom.)

6 THE COURT: Anything else counsel? No? Okay,
7 we're in recess.

8 (Court recessed at 7:45 p.m.)

9 C E R T I F I C A T E

10

11 I, Sandra L. Bailey, do hereby certify that
12 the foregoing transcript is a true and accurate
13 transcription of the within proceedings, to the best of
14 my knowledge, skill, ability and belief.

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17 Submitted: 11/3/09 /s/ Sandra L. Bailey
 SANDRA L. BAILEY, LCR, CM, CRR

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